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WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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.

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Presidential Documents

Title 3—

The President

Proclamation 6665 of April 8, 1994

Jewish Heritage Week, 1994

By the President of the United States of America

A Proclamation

American history is a tapestry woven from the fabric of traditions and beliefs from every corner of the globe and bound together by a common love for life and liberty. Since our Nation's earliest days, Jewish citizens have contributed to our success in virtually every field of human endeavor. The Jewish culture, a vibrant and distinctive strand in our richly textured tapestry, has helped to give our Nation its shape.

After enduring centuries of hardship and bigotry in nations throughout the diaspora, many Jewish people found their ways to America's shores. Some came early in our Nation's history, seeking to make their mark in a newly free society. Others came in the wake of the pogroms or the Holocaust, looking for a government that would protect their rights to worship and live as they chose. By boat, airplane, and any other means that would carry them, Jewish people came to America and infused this great land with a noble heritage based on faith and family, with an enduring commitment to the pursuit of knowledge and the ideal of justice.

Though the customs of daily Jewish life have changed markedly over the millennia, the central tenets of ancient Judaism have remained a constant guide since Moses taught them to his people so long ago. Jewish families continue to hand down these lessons to their children, and the fundamental lessons of the Torah still serve the faithful today, as we seek to renew our land and restore the bonds of community.

Jewish citizens, along with people of hundreds of other beliefs and backgrounds, have found freedom and success in our Nation of immigrants, and they continue to make lasting and meaningful contributions to every area of our society. Recognizing the positive influence of the Jewish people, traditions, and culture within our country, the Congress, by Public Law 103–27, has designated April 10 through April 17, 1994, as "Jewish Heritage Week," and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of April 10 through April 17, 1994, as Jewish Heritage Week. I call upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-9040
Filed 4-11-94; 2:38 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6666 of April 8, 1994

Pan American Day and Pan American Week, 1994

By the President of the United States of America

A Proclamation

Within the last few years, we have witnessed remarkable changes around the globe. The defeat of oppression and the ascendancy of democracy and free market systems have brought a new world full of opportunities and challenges. Nowhere has the march toward positive change—political, economic, and social—been more dramatic or more complete than in our own hemisphere.

From North to South, more citizens of the Americas are enjoying the fruits of liberty than ever before. Principles fundamental to democracy, such as acceptance of the rule of law and respect for human rights, continue to gain ground. There is no question that this hemisphere is well on its way to becoming a beacon of liberty and democracy for the whole world.

The interdependence of nations is greater than ever because democracy, human rights, market economics, and good governance are ideas that are rapidly maturing throughout the Americas. They form an enduring foundation for sustainable and mutually beneficial economic growth and development. A renewed partnership between nations of this hemisphere will further these ideas, thus ensuring lasting security for future generations.

The approval of the North American Free Trade Agreement was an historic achievement and one that is crucial in this process. Beginning with Canada and Mexico, it will build a bridge of greater economic and political cooperation. It will serve as the model for our future relationships with the region. It will advance the vision of a community of nations committed to democracy, bound together by open markets and rising standards of living and dedicated to the peaceful resolution of disputes.

Over a century ago, representatives of the nations of this hemisphere met in Washington to establish the International Union of the American Republics. Accepting the tenets of democracy, peace, security, and prosperity, these member nations made a firm commitment to mutual cooperation. The Union's successor, the Organization of American States (OAS), has furthered this commitment. I applaud and encourage the activity of the OAS in this pursuit to ensure that worldwide changes create a hemisphere of peace and prosperity.

We can take great pride in accomplishments already achieved in the Americas. But there is much work to be done. Later this year, I will host a summit of the democratically elected leaders of our hemisphere. The Summit of the Americas will have two broad themes: democracy and good governance; and trade expansion, investment, and sustainable development. The Summit will be an historic opportunity for our nations to recognize explicitly this convergence of democratic and free market values and to chart a course for the future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Thursday, April 14, 1994, as "Pan American Day" and the week of April 10 through April 16, 1994, as "Pan American Week." I urge the Governors of the 50 States, the Governor

of the Commonwealth of Puerto Rico, and officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-9041
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Rules and Regulations

Federal Register
Vol. 59, No. 71
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

NUCLEAR REGULATORY COMMISSION

5 CFR Chapter XLVIII

10 CFR Part 0

RINs 3209–AA15 and 3150–AE60

Supplemental Standards of Ethical Conduct for Employees of the Nuclear Regulatory Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC), with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the Nuclear Regulatory Commission that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. These supplemental regulations address outside employment by NRC employees and ownership of securities by NRC employees, their spouses, and minor children. The NRC is also repealing its current regulations on those subjects, while adding a cross-reference to the new provisions and preserving certain separable financial interest exemptions.

EFFECTIVE DATE: Final rule effective July 12, 1994.

FOR FURTHER INFORMATION CONTACT: John Szabo, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–504–1606.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) for codiication at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 53583. These Standards, which took effect on February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

5 CFR 2635.105 authorizes executive agencies, with concurrence from OGE, to publish agency-specific supplemental regulations that are necessary to implement their ethics programs. The Nuclear Regulatory Commission, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new chapter XLVIII of 5 CFR, consisting of part 5801, are necessary for successful implementation of the NRC's ethics program. By this notice, the Nuclear Regulatory Commission is also repealing the parts of its regulations which were preserved by 5 CFR part 2635 pending issuance of this supplemental regulation (see the additional OGE grace period extension at 59 FR 4779–4780).

II. Analysis of the Regulations

Section 5801.101 General

Section 5801.101 explains that the regulations contained in the final rule apply to all NRC employees, including members of the Commission, and are supplemental to the executive branch-wide standards. Members and employees of the Nuclear Regulatory Commission also are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional regulations regarding their conduct published by the agency in 10 CFR part 0.

Section 5801.102 Prohibited Securities

5 CFR 2635.403(a) authorizes agencies, by supplemental regulation, to prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees based on a determination that the acquisition or holding of such interests would cause reasonable persons to question the impartiality and objectivity with which agency programs are administered. Where it is necessary to the efficiency of the service, such prohibitions or restrictions may be extended to employees' spouses and minor children.

By 10 CFR 0.735–29, the Commission has long prohibited most of its employees, their spouses, minor children, and other members of their households, from holding stocks, bonds, and other securities issued by major entities in the commercial nuclear field. Section 5801.102 imposes very similar restrictions upon designated employees, their spouses and minor children, based upon the Commission's determination that these restrictions are necessary to maintain public confidence in the impartiality and objectivity with which the NRC executes its regulatory functions. The restrictions also will help to maintain public confidence that sensitive information relating to agency operations is not misused for private gain and will help accomplish the NRC's mission by avoiding widespread disqualification of employees from the performance of their official duties.

Section 5801.102 is narrower in scope than 10 CFR 0.735–29 in that it does not apply to all members of the employee's household. Consistent with 5 CFR 2635.403(a) and 2635.403(c)(1), it restricts only the holdings of designated employees, their spouses, and minor children. The Commission has determined that application of the securities restrictions in § 5801.102 to spouses and minor children is necessary to the efficiency of the service. As evidenced by 10 CFR 0.735–29, the NRC believes it is important to the success of its mission for regulated entities and others affected by agency decisions to have this additional degree of assurance that agency decisions are not influenced by considerations of personal gain on the part of NRC personnel.

In addition to limiting the section's application to employees, their spouses, and minor children, the Commission has made other minor revisions to the restrictions as stated in 10 CFR 0.735–29. The categories of prohibited securities set forth in § 5801.102(b) have been revised to reflect the new types of licenses established in 10 CFR part 52 and to include securities issued by State or local governments to finance low-level waste facilities. Section 5801.102(b)(8) also prohibits employees for the first time from owning securities issued by an energy or utility sector mutual fund that has invested more than 25 percent of the fund's assets in prohibited securities.

The time frames for complying with the security ownership regulations have also been modified. Under 10 CFR 0.735–29, NRC employees have had 30

days to comply after commencing employment or being promoted to a position covered by the security ownership prohibitions; one year to divest any security interest newly added to the agency's prohibited security list; and a "reasonable time" to dispose of securities inherited by gift. Consistent with 5 CFR 2635.403(d), the final rule provides a uniform 90-day period for divestiture, with extension available in cases of undue hardship.

The criteria in § 5801.102(e) for waiving the prohibition on holding a specific security have been modified to provide greater specificity. A criterion has been newly added to cover circumstances in which legal constraints prevent divestiture. One example of such a legal constraint would be the situation in which the prohibited security is held as part of the assets of a trust of which the employee is a beneficiary and where the trustee, who has sole authority to purchase and sell the assets, refuses the employee's request to sell the prohibited security.

The Commission has eliminated the requirement contained in 10 CFR 0.735–29 that employees who are subject to the security ownership restrictions certify each year that they are in compliance. Because the annual certifications have rarely revealed violations of the substantive restrictions, there is inadequate justification for continuing this requirement. However, to monitor compliance, the NRC will continue to require employees holding designated positions to certify compliance upon commencement of employment with the agency or upon promotion for the first time to a position covered by the security ownership restriction. Agency employees will also be required to report to the Office of the General Counsel in writing any prohibited securities obtained after the initial certification. This will permit the Office of the General Counsel to track required divestitures.

On the effective date of this regulation, the NRC will issue Management Directive 7.7 and its accompanying Handbook which lists those agency positions covered by the security ownership restrictions. The Handbook will also describe procedures for obtaining Certificates of Divestiture and waivers from the security ownership restrictions. Both the Management Directive and Handbook will be available at the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555–0001. Copies will also be available in each NRC Office.

Section 5801.103 Prior Approval for Outside Employment

5 CFR 2635.803 authorizes individual agencies, by supplemental regulation, to require agency employees to obtain approval before engaging in outside employment or other outside activities. The NRC has long had the prior approval requirement, set forth in 10 CFR 0.735–40. Section 5801.103 of the final rule retains the requirement that NRC employees obtain prior written approval before engaging in outside employment with entities that are regulated by or have business with the Commission. The NRC policy has been, and will continue to be, to encourage teaching, lecturing, or writing not prohibited by 5 CFR part 2635 or other applicable law.

The agency designees for approval of outside employment and internal agency procedures for obtaining the necessary approvals will be set forth in NRC Management Directive 7.8 and the accompanying Handbook. This Directive and Handbook will be issued on the effective date of this regulation and will be available in the NRC Public Document Room and in each NRC Office.

III. Repeal of Superseded Portions of the NRC Conduct Regulations and Related Modifications

The final rule repeals the NRC conduct regulations 10 CFR 0.735–8, 0.735–29, and 0.735–40, effective on the same day that this rule takes effect. The information collection requirements of § 0.735–8 are no longer necessary. Section 0.735–29 will be superseded by the prohibitions on securities contained in 5 CFR 5801.102 and § 0.735–40 will be superseded by the requirements for prior approval of outside employment contained in 5 CFR 5801.103. These repeals, together with those effected by 58 FR 3825 and 29951, leave in 10 CFR part 0 only the waiver provisions of §§ 735–21 (a) and (b) which are preserved by 5 CFR 2635.402(d)(1). These paragraphs are redesignated § 0.735–2 (a) and (b) to follow a new § 0.735–1 which provides a cross-reference to the NRC's supplemental regulation and to the executive branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), the NRC finds good cause not to seek public comment on this rule. Such comment is unnecessary because the NRC is essentially repromulgating existing regulations in a different form, and the regulations pertain wholly to internal agency personnel matters that affect only NRC employees, their spouses, and minor children. To increase the likelihood of a smooth transition from the NRC's prior ethics rules to the new Government-wide standards of ethical conduct regulations, these rulemaking actions should take place as soon as possible. The rule and accompanying repeals will become effective 90 days after the date of publication in the **Federal Register**.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The NRC is promulgating a supplemental regulation to OGE's Government-wide standards of conduct regulations in order to implement effectively the NRC's ethics program. This rule has no significant impact on health, safety or the environment. There is no substantial cost to licensees, the NRC, OGE, or other Federal agencies.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects only NRC employees.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule because these supplemental regulations do not involve any provisions which would impose backfits as defined in 10 CFR 50.109.

List of Subjects

5 CFR Part 5801

Conflict of interests, Government employees.

10 CFR Part 0

Conflict of interests, Criminal penalties.

Dated at Rockville, Maryland, this 23rd day of March, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Approved: March 31, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Nuclear Regulatory Commission, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 10, chapter I, of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter XLVIII, consisting of part 5801, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER XLVIII—NUCLEAR REGULATORY COMMISSION

PART 5801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NUCLEAR REGULATORY COMMISSION

Sec.

5801.101 General.
5801.102 Prohibited securities.
5801.103 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 2201, 5841; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306, 5 CFR 2635.105, 2635.403, 2635.803.

§ 5801.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and other employees of the Nuclear Regulatory Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, members and other employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634 and to additional regulations regarding their conduct contained in 10 CFR part 0.

§ 5801.102 Prohibited securities.

(a) *General prohibition.* No covered employee, and no spouse or minor child of a covered employee, shall own securities issued by an entity on the list described in paragraph (b) of this section.

(b) *Prohibited securities list.* Once a year, or on a more frequent basis, the Commission will publish and distribute to employees a list of entities whose securities a covered employee or the spouse or minor child of a covered employee may not own. The list shall consist of entities which are:

(1) Applicants for or holders of early site permits, construction permits, operating licenses, or combined construction permits and operating licenses for facilities which generate electric energy by means of a nuclear reactor;

(2) State or local governments, if the primary purpose of the security is to finance the construction or operation of a nuclear reactor or a low-level waste facility;

(3) Entities manufacturing or selling nuclear power or test reactors;

(4) Architectural-engineering companies providing services relating to a nuclear power reactor;

(5) Applicants for, or holders of, a certified standard design;

(6) Entities licensed or regulated by the Commission to mill, convert, enrich, fabricate, store, or dispose of source, byproduct, or special nuclear material, or applicants for such licenses that are designated by the Commission because they are or will be substantially engaged in such nuclear fuel cycle or disposal activities;

(7) The parent corporation of any subsidiary described in paragraphs (b)(1)–(b)(6) of this section; and

(8) An energy or utility sector investment fund which has more than 25% of its assets invested in securities issued by entities described in paragraphs (b)(1)–(b)(7) of this section.

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

(1) A covered employee means:

(i) A member of the Commission;

(ii) The Inspector General of the NRC;

(iii) A member of the Senior Executive Service (SES);

(iv) An employee who holds a non-SES position above GG–15; and

(v) Any other employee, including a special Government employee, whose duties and responsibilities, as determined by the Commission or its designees, require application of the securities ownership prohibition contained in this section to ensure public confidence that NRC programs are conducted impartially and objectively. The positions of these employees are specified in NRC Management Handbook 7.7, which is available in the NRC Public Document Room; and

(2) The term "securities" includes all interests in debts or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(d) *Divestiture and reporting of prohibited securities.*—(1) *Newly covered employees.* Upon promotion or other appointment to a position subject to the securities prohibition of this section, a covered employee shall sign a certification:

(i) Identifying securities of an entity on the prohibited securities list which the employee, or the spouse or minor child of the employee, owns, or

(ii) Stating that the employee, or the spouse or minor child of the employee, does not own any prohibited securities.

Except as provided in paragraph (d)(4) of this section, the newly covered employee, or the spouse or minor child of the employee, shall divest prohibited securities within 90 days after appointment to the covered position.

(2) *Newly prohibited securities.* Within 30 days after publication of the prohibited securities list to which an entity's name has been added, a covered employee who owns, or whose spouse or minor child owns, prohibited securities shall make a written report of that ownership to the Office of the General Counsel. Except as provided in paragraph (d)(4) of this section, the covered employee, or the spouse or minor child of the covered employee, shall divest prohibited securities within 90 days after publication of the prohibited securities list.

(3) *Securities acquired without specific intent.* Within 30 days after a covered employee, or the spouse or minor child of a covered employee, acquires securities of an entity on the prohibited securities list as a result of marriage, inheritance, gift or otherwise without specific intent to acquire the securities, the covered employee shall make a written report of the acquisition to the Office of the General Counsel. Except as provided in paragraph (d)(4) of this section, a covered employee, or the spouse or minor child of a covered employee, shall divest prohibited securities within 90 days after the date of acquisition.

(4) *Extension of period to divest.* Upon a showing of undue hardship, the Chairman of the Nuclear Regulatory

Commission may extend the 90 day period for divestiture specified in paragraphs (d)(1) through (d)(3) of this section.

(5) *Disqualification pending divestiture.* Pending divestiture of prohibited securities, a covered employee must disqualify himself or herself, in accordance with 5 CFR 2635.402, from participation in particular matters which, as a result of continued ownership of the prohibited securities, would affect the financial interests of the employee, or those of the spouse or minor child of the employee. Disqualification is not required where a waiver described in 5 CFR 2635.402(d) applies. Procedures for obtaining individual waivers are contained in NRC Handbook 7.7, which is available in the NRC Public Document Room.

(6) *Tax treatment of gain on divested securities.* Where divestiture is required by this section, the covered employee (except a special Government employee) may be eligible to defer the tax consequences of divestiture under subpart J of 5 CFR part 2634, pursuant to procedures in NRC Handbook 7.7, which is available in the NRC Public Document Room.

(e) *Waivers.* (1) The Chairman may grant a waiver to permit a covered employee, or the spouse or minor child of a covered employee, to retain ownership of a security of an entity on the prohibited securities list upon a determination that the holding of the security is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that:

(i) Under the circumstances, application of the prohibition is not necessary to ensure confidence in the impartiality and objectivity with which NRC programs are administered;

(ii) Legal constraints prevent divestiture; or

(iii) For a special Government employee, divestiture would result in substantial financial hardship.

(2) Where a waiver has been granted under paragraph (e)(1) of this section, the covered employee must disqualify himself or herself, in accordance with 5 CFR 2635.402, from participation in particular matters which, as a result of continued ownership of the prohibited security, would affect the financial interests of the employee, or those of the spouse or minor child of the employee unless the employee has received a waiver described in 5 CFR 2635.402(d), pursuant to procedures in NRC Handbook 7.9, which is available in the NRC Public Document Room.

§ 5801.103 Prior approval for outside employment.

(a) An employee, other than a special Government employee, shall obtain written authorization before engaging in compensated outside employment with:

(1) A Commission licensee;

(2) An applicant for a Commission license;

(3) An organization directly engaged in activities in the commercial nuclear field;

(4) A Commission contractor;

(5) A Commission supplier;

(6) An applicant for or holder of a license issued by a State pursuant to an agreement between the Commission and the State;

(7) A trade association which represents clients concerning nuclear matters; or

(8) A law firm or other organization which is participating in an NRC proceeding or which regularly represents itself or clients before the NRC.

(b) Requests for approval shall be submitted in writing to the agency designee specified in NRC Management Directive 7.8, which is available in the NRC Public Document Room, in accordance with procedures set forth in the accompanying NRC Handbook.

(c) Approval of outside employment shall be granted in writing only upon a determination by the agency designee that the proposed outside employment would not violate a Federal statute or regulation, including 5 CFR 2635.

(d) For purposes of this section, "outside employment" means any form of non-Federal employment, business relationship or activity, involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker.

10 CFR CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 0—CONDUCT OF EMPLOYEES

2. The authority citation for part 0 is revised to read as follows:

Authority: Secs. 25, 161, 68 Stat. 9925, 948, as amended (42 U.S.C. 2035, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306, 5 CFR 2635.105 and 2635.402(d)(1). Section 0.735–2, also issued under 5 U.S.C. 552, 553.

3. A new § 0.735–1 is added to read as follows:

§ 0.735–1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Nuclear Regulatory Commission (NRC) are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the NRC regulation at 5 CFR part 5801 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

4. Section 0.735–21 is redesignated as § 0.735–2 and the heading is revised to read thereof, "Exemptions for financial interests."

§ 0.735–8, 0.735–29 and 0.735–40 [Removed]

5. Sections 0.735–8, 0.735–29 and 0.735–40 are removed.

[FR Doc. 94–8691 Filed 4–12–94; 8:45 am]

BILLING CODE 7590–10–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Part 1610

Rural Electrification Administration

7 CFR Parts 1735, 1737, 1744, 1753

Rural Telephone Bank and Telephone Program Loan Policies, Procedures, and Requirements; and Telecommunications System Construction Policies and Procedures

AGENCY: Rural Electrification Administration and Rural Telephone Bank, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) adopts, except for the State Telecommunications Modernization Plan, its interim rule published December 20, 1993, as a final rule with minor technical changes. This action makes changes to the telephone program required by the Rural Electrification Loan Restructuring Act of 1993 (RELRA or legislation).

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Matthew P. Link, Director, Rural Telephone Bank Management Staff, Rural Electrification Administration, U.S. Department of Agriculture, 14th & Independence Avenue, SW., room 2832–S, Washington, DC 20250–1500, telephone number (202) 720–0530.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not-significant for purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget (OMB). However the interim rule was reviewed by the OMB in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and was subsequently exempted from the OMB review under 12866.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the final rule have been approved by the OMB in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements are approved under OMB control number 0572–0079.

Send comments regarding this collection of information to: Department of Agriculture, Clearance Office, Office of Information Resources Management, Room 404–W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

The information set forth in the interim rule regarding Executive Orders 12778 and 12372, the Regulatory Flexibility Act Certification, the National Environmental Policy Act Certification, and the Catalog of Federal Domestic Assistance, applies to this final rule without change.

Background

On December 20, 1993, REA published an interim rule (58 FR 66250) to incorporate changes to telephone loan policies required by RELRA (107 Stat. 1356). RELRA amended several provisions of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act), and mandated a restructuring of the telephone loan program.

REA received 81 comments regarding the interim rule. Overall, the greatest concern on the part of the responding organizations was 7 CFR part 1751, subpart B, the State Telecommunications Modernization Plan (modernization plan). Because of the overwhelming response regarding the modernization plan, related concerns and possible modifications will be resolved in a separate notification.

This notice addresses comments on parts of the interim rule other than 7 CFR part 1751, subpart B. All comments were taken into consideration in preparing the final rule. Comments were received from the following:

(1) Hills Telephone Company, Inc.

(2) Interstate Telecommunications Cooperative, Inc.

(3) Martin and Associates, Inc., submitted comments on behalf of 16 local exchange carriers located in South Dakota.

(4) Joint comments from the National Rural Telecom Association and the Western Rural Telephone Association.

(5) National Telephone Cooperative Association.

(6) Joint comments from the Oklahoma Rural Telephone Coalition, Rural Arkansas Telephone Systems, and Texas Statewide Telephone Cooperative, Inc.

(7) Organization for the Protection and Advancement of Small Telephone Companies.

(8) United States Telephone Association.

The comments will be discussed in the order in which they appear in the final rule. This **Federal Register** notice serves to notify the public that the interim rule, with the exception of 7 CFR part 1751, subpart B (modernization plan regulations), is final.

Section 1610.1 General

Comment Summary: Two organizations objected to REA distinguishing between authorized loan purposes for Rural Telephone Bank (RTB) loans by establishing a preference for one classification of authorized statutory loan purposes over another. Further, it was stated that RTB is without authority to impose such a preference, and this provision should be deleted from the final rule.

Response: While RELRA amended section 408(a)(2) of the RE Act to revise certain purposes for RTB financing, section 408(a)(1) was not amended and it references section 201 where such purposes are still eligible for RTB financing. REA believes that RELRA, by amending 408(a)(2), indicated preference to loans for section 408(a)(2) purposes over 408(a)(1) purposes to the extent that REA has completed applications for loans for purposes set forth in 408(a)(2). This policy is consistent with the RELRA provisions which provide (1) the same purposes for REA cost-of-money loans as for 408(b)(2) loans, and (2) that RTB and cost-of-money loans are to be concurrent.

Section 1610.6 Concurrent Bank and REA Cost-of-Money Loans

Comment Summary: Several organizations objected to REA requiring that REA cost-of-money loans and RTB loans be made concurrently, and stated that concurrence should remain an option of the borrower. Also, there was concern that mandating RTB to make loans concurrently with the REA cost-of-money program would compromise the independence of a future, privatized RTB. Commenters requested that REA revise the interim rule to provide borrowers with an option of selecting concurrent RTB and REA cost-of-money loans.

Response: Concurrent loans are required by RELRA. This is also consistent with RELRA's other amendments that only allow REA cost-of-money and RTB loans to be made for the same purposes and that subject those loans to the same eligibility requirements. This approach facilitates the most effective administration of this policy.

Section 1610.10 Determination of Interest Rate on Bank Loans

Comment Summary: REA should acknowledge that future RTB interest rates will be calculated taking into consideration RELRA's interest rate amendment.

Response: The methodology for calculating interest rates charged on RTB loans is provided in § 1610.10. While the interest rate amendment requires calculating a single RTB interest rate that applies to all advances made within a given fiscal year, this amendment only takes effect when funds have been appropriated by Congress to offset any subsidy associated with charging a single rate. When such an appropriation is made, RTB will calculate an interest rate in accordance with the RELRA amendment. However, no revisions will be made to § 1610.10 because the methodology for calculating interest rates remains unchanged.

Section 1610.11 Prepayments

Comment Summary: One commenter suggested that paragraph (b) be changed to conform with the language of the RE Act. Others commented that the elimination of prepayment premiums should apply to all outstanding RTB loans, not just those approved after November 1, 1993.

Response: REA believes the language in this provision of the interim rule correctly interprets RELRA's amendment to section 408(b)(8) of the RE Act. All RTB loan agreements

entered into before November 1, 1993, contain a prepayment premium provision. That prepayment premium policy was determined by the RTB Board of Directors. The original prepayment policy was established by the RTB Board of Directors on February 10, 1972, and later revised on May 3, 1984. RELRA eliminated the premiums only on loans approved after November 1, 1993. Further, a provision to eliminate the prepayment premium for RTB loans approved before November 1, 1993, was initially included in an early draft of the legislation but was eventually removed.

Section 1735.10 General

Comment Summary: With regard to REA's use of borrower-funded consultants (paragraph (e)), one organization commented that while the interim rule follows the legislation, many question the intent, usage and unfair advantages such activity could bring to small companies with little or no capital resources.

Response: REA recognizes these concerns; however, the option of hiring a consultant is necessary in order to adhere to the provision of the legislation. In accordance with the legislation, the Administrator is authorized to accept funds voluntarily provided by a borrower to be used to obtain assistance from third party experts in the review of a loan application. The purpose of this provision is to assist in the expeditious review of numerous loan applications given limited REA manpower and resources. The Administrator intends that the telephone loan programs be administered in a fair and impartial manner.

Comment Summary: With regard to paragraph (b), one organization commented that the language "in REA's opinion" should be deleted from the final rule because REA does not possess the authority which this reference implies to deny loans without a factual basis.

Response: This language was included to insure that (1) the main objectives of the RE Act (i.e., provide service to the widest practical number of rural subscribers), and (2) the provisions of the borrower's modernization plan will be carried out by borrowers of REA telephone loans. REA will not deny a loan without a factual basis. If the purposes of a loan are not consistent with the goals of the modernization plan for the borrower's State, then REA will deny the loan. This determination will be based on the modernization plan requirements and objectives provided in § 1751.106. However, REA has considered that strict conformity to the requirements of a borrower's modernization plan could result in loans that would not be economically or technically feasible. REA has expanded § 1735.10(b) to take into consideration these situations when making loans.

Section 1735.17 Facilities Financed

Comment Summary: One organization commented that the interim rule correctly recognizes that under the legislation certain facilities and purposes will not be financed depending on the type of loan. The commenter further stated that the background statement fails to acknowledge that RTB loans will still be made for section 201 loan purposes and that loans that fall into the restricted purpose category are the new cost-of-money loans.

Response: See the response to the comment on § 1610.1.

Section 1735.22 Loan Security

Comment Summary: One commenter objected to the Times Interest Earned Ratio (TIER) maintenance requirement stating that REA is without authority to impose such requirement, and that the TIER range established in the legislation as eligibility criteria is adequate to protect loan security. Also, that the 1.75 TIER level is arbitrary.

Response: The TIER criteria put forth in the legislation determines the borrower's loan eligibility, it does not imply that risks to loan security are nonexistent if the borrower meets the eligibility criteria. Using the TIER eligibility range for maintenance purposes would require the borrower to maintain a minimum TIER of only 1.0. Allowing the borrower to maintain net margins at a level sufficient only to cover interest expenses does not offer much financial security nor assure credit quality. However, during the forecast period (i.e., construction period) when interest expenses are higher and associated revenues are not yet realized the borrower can maintain a TIER of 1.0. Afterwards, the TIER maintenance requirement merely requires the borrowers to maintain the TIER predicted by the projections given to REA by the borrower and on which REA relied on making the loan, but not to exceed 1.75. The TIER maintenance requirement provides some assurance of adequate loan security without placing an additional burden on the borrower. In fact, more than 93 percent of REA borrowers have existing TIERS of 1.75 or greater. This standardized maintenance requirement is needed because the new eligibility requirements rendered the previous maintenance requirement inequitable and obsolete. As a Federal lending institution, REA has the responsibility to protect the Government's security interest.

Section 1735.30 Hardship Loans

Comment summary: Several commenters suggested that the priority system established for approving REA hardship loans was unnecessary, too complex, and non-statutory. While recognizing that one of the objectives of the priority system is to ensure financing to the neediest borrowers, the commenters stated that, overall, the system would be burdensome on REA and its borrowers and would treat some borrowers unfairly. One commenter stated that the current "first come first served" policy for loan approval would be adequate for approving loans in addition to assessing the urgency of each financing request. Further, one commenter, stating that loan approval should be based only on the eligibility criteria in the RELRA and not on specific plant modifications (such as distance learning or medical link facilities), commented that the method and criteria used in assigning points were unfair to some borrowers. The commenters also stated borrowers may be denied financing (within a reasonable time frame or perhaps altogether) due to the nature of the point assignment and ranking system.

Response: The hardship loan program created by the RELRA is intended to ensure that lower cost capital financing will be available to those applicants most in need due to extreme operating conditions. Since REA believes that the amount of financing available to fund the hardship program will generally be more limited than the eligible loan applications, it is necessary to implement a system that allows the widest practical nationwide use of those limited funds.

The ranking criteria REA has established does not conflict with a borrowers' eligibility to receive hardship financing. All borrowers that meet the hardship eligibility requirements (TIER, density, and modernization plan) will receive financing, subject to the availability of funds. The ranking criteria does, however, provide REA with a methodology of fairly assessing all eligible applications and provides an equitable manner in which to disburse the limited amount of funds available.

In addition, the ranking and subsequent prioritizing of a loan application does not require any additional information on the part of the borrower. All of the information needed

is readily available in the loan application and the loan study prepared by REA. Any additional burden placed on REA is minimal and will not result in a delay in the processing of an application.

Comment summary: Concerning paragraph (b), one commenter stated that the size of an exchange within a borrower's service territory is not relevant to the density provision which precludes borrowers from receiving hardship financing for facilities in an exchange where the average number of subscribers per mile of line is greater than 17.

Response: The RELRA clearly intended to avoid the use of lower-cost hardship financing in densely populated "semi-urban" areas. RELRA precluded borrowers from receiving hardship financing to be used in any "area" where the average number of subscribers per mile of line is greater than 17. REA has defined "area" to mean an exchange of the borrower. In addition, to further clarify the measure of a semi-urban area, 1,000 existing subscribers is also used so that high density exchanges with large populations can be distinguished from those remote pockets of populations that have a high exchange density, but are clearly rural areas.

Comment summary: With regard to the optimal use of loan funds (§ 1735.30(e)), several commenters stated that there is no need for REA to limit the amount of a hardship loan to any borrower. One respondent commented that by "splitting" loan applications and identifying the most urgent financing needs while seeking agreement from all parties involved in a financing request, REA could effectively ensure hardship financing in the neediest situations, without limiting loan size.

Response: REA has limited the size of hardship loans for the borrowers' (and its subscribers) benefit. Since eligible borrowers will be competing for a limited amount of available financing, limiting the loan size helps to ensure that (1) hardship funds will be provided for the most urgent loan purposes and (2) the widest number of borrowers, and consequently rural subscribers, will benefit from the hardship program.

Section 1735.31 REA Cost-of-Money and RTB Loans

Comment Summary: With regard to § 1735.31(e), one organization commented that the TIER ratio contained in the REA cost-of-money and RTB eligibility criteria seems to be at variance with the statutory definition, and suggested that the final rule conform to the precise language of the legislation.

Response: REA believes the language in the interim rule is consistent with the language of the legislation.

Comment Summary: One organization commented that REA is without authority to establish the requirement that interest rates on cost-of-money loans be fixed at the time of advance rather than at the time of loan approval. The commenter suggested that in the absence of statutory direction to the contrary, interest rates on cost-of-money loans should be fixed at the time of loan approval.

Response: The requirements of the interim rule reflect REA's interpretation of the legislation, that is, interest rates based on the cost of capital to the Government at the time of each advance of funds. REA adopted this approach to ensure against rate disparity between the time of loan approval and advance of funds. REA must borrow matching funds from the U.S. Treasury when the borrower requests an advance. The interest rate charged to the borrower is effectively the same interest rate to be paid to Treasury on this borrowing by REA. REA believes that such approach is true to Congress' intent that loans be made at the then current cost of money to the Government. This is evident in the amount of subsidy appropriated by Congress for cost-of-money loans.

Comment Summary: One organization commented that the procedure outlined in paragraph (c)(2) for determination of the cost-of-money interest rate is unnecessarily cumbersome and should be simplified in the final rule. The commenter also suggested that paragraph (d) be revised to make it clear that the borrower's request is a specific one to conform to the language of the RE Act and § 1735.32(a).

Response: With regard to paragraph (c)(2), the procedure as written is necessary to ensure a clear and definitive method for all parties when setting the interest rate on cost-of-money loans. Concerning paragraph (d), REA believes the language in the interim rule is consistent with the language of the legislation, and that it is evident that REA will only make loan guarantees to those borrowers specifically requesting a guarantee.

Section 1735.32 Guaranteed Loans

Comment Summary: With regard to paragraph (b), one organization commented that the requirement to participate in a modernization plan should be the same for all loan programs, and the rule as currently written appears discriminatory.

Response: The legislation clearly states that the modernization plan shall apply only to REA hardship, REA cost-of-money, and RTB loans. The interim rule as written adheres to the legislation.

Sections 1735.74 Submission of data, and 1737.22 Supplementary information

Comment Summary: One organization commented that the language relating to the certification of participation in a modernization plan should be revised to eliminate the restrictive reference to the borrower's president by substituting chief executive officer or preferably authorized corporate officer.

Response: Participating in a modernization plan and fulfilling its goals may require a significant effort from the borrower, and may effect whether a borrower receives a loan. Due to the critical nature of these factors, REA believes it is in the interests of both the borrower and REA to have the certification signed by the borrower's president.

Simultaneous Loans

Comment Summary: One organization commented on REA's reference to simultaneous loans, stating that it is not a defined term in the interim rule nor is it a term utilized in either the legislation or the existing RE Act. The commenter suggested this provision be deleted in the final rule.

Response: Since certain purposes will not be financed depending on the type of loan, REA has used the term "simultaneously" to clarify that these types of loans may be made to the borrower at the same time or in the same set of documents. The term "simultaneously" was used so as not to confuse the reader since, historically, "concurrent loans" has referred only to the combination of REA and RTB loans.

List of Subjects

7 CFR Part 1610

Accounting, Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1735

Accounting, Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1737

Accounting, Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1744

Accounting, Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1753

Loan programs-communications, Telecommunications, Telephone.

7 CFR CHAPTER XVI

PART 1610—LOAN POLICIES

Accordingly, the interim rule amending 7 CFR part 1610 which was published at 58 FR 66252 on December 20, 1993, is adopted as a final rule without change.

7 CFR CHAPTER XVII

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELEPHONE PROGRAM

Accordingly, the interim rule amending 7 CFR part 1735 which was published at 58 FR 66253 on December 20, 1993, is adopted as a final rule with the following change:

1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Section 1735.10(b) is revised to read as follows:

§ 1735.10 General.

* * * * *

(b) REA will not make hardship loans, REA cost-of-money loans, or RTB loans for any purposes that, in REA's opinion, are inconsistent with the borrower achieving the requirements stated in the State's telecommunications modernization plan within the time frame stated in the plan (see 7 CFR part 1751, subpart B), unless REA has determined that achieving the requirements as stated in such plan is not technically or economically feasible.

* * * * *

PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

Accordingly, the interim rule amending 7 CFR part 1737 which was published at 58 FR 66256 on December 20, 1993, is adopted as a final rule without change.

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

Accordingly, the interim rule amending 7 CFR part 1744 which was published at 58 FR 66257 on December 20, 1993, is adopted as a final rule without change.

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

Accordingly, the interim rule amending 7 CFR part 1753 which was published at 58 FR 66259 on December 20, 1993, is adopted as a final rule with the following technical changes:

1. The authority citation for part 1753 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1753.2, remove the definition "STMP (State Telecommunications Modernization Plan)" and add a new definition in alphabetical order as follows:

§ 1753.2 Definitions.

* * * * *

Modernization plan. A plan, which has been approved by REA, for improving the public switched network of a state. The modernization plan must conform to the provisions of 7 CFR part 1751, subpart B, and applies to all telecommunications providers in the state.

* * * * *

§§ 1753.3, 1753.15, 1753.66 [Amended]

3. Sections 1753.3(a) introductory text and (a)(4), 1753.15(b)(4), and 1753.66(d) are amended by adding the words "modernization plan" in place of the acronym "STMP" each place it appears.

Dated: April 6, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–8861 Filed 4–12–94; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, 30, 40, 55, 70, and 73

RIN 3150–AE98

Consolidation of the NRC Region V Office With the Region IV Office

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations as a result of the consolidation of the Region V office in Walnut Creek, California, with the Region IV office in Arlington, Texas. These amendments are necessary to inform the public of the administrative changes to the NRC's regulations.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: John M. Montgomery, USNRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, TX 76011–8064; telephone (817) 860–8226.

SUPPLEMENTARY INFORMATION: On April 4, 1994, the NRC will consolidate its Region V office in Walnut Creek, California, with the Region IV office in Arlington, Texas. An NRC field office will be established in Walnut Creek, California.

Previously, the NRC published a general notice in the **Federal Register** (59 FR 8667; March 1, 1994) stating that effective March 1, 1994, the emergency response functions and responsibilities of the current Region V office would be transferred to the Region IV office.

Because this amendment deals with agency procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a change in address and telephone number. The amendment is effective April 4, 1994.

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)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

The final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because it is an administrative action that changes the address and telephone number of an NRC region.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because this rule does not involve any provisions that would impose a backfit as defined in § 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Incorporation by reference, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

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 parts 1, 20, 30, 40, 55, 70, and 73.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

§ 1.5 [Amended]

2. In § 1.5, paragraph (b), in the NRC Region IV address "Suite 1000" is revised to read "Suite 400" and the NRC Region V address is revised to read "USNRC, Region IV Walnut Creek Field Office, 1450 Maria Lane, Suite 300, Walnut Creek, CA 94596."

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

4. Appendix D to §§ 20.1001–20.2402 is amended by removing the Region V entry and by revising the Region IV entry to read as follows:

APPENDIX D TO §§ 20.1001–20.2402.—U.S. NUCLEAR REGULATORY COMMISSION REGIONAL OFFICES

	Address	Telephone (24 hour)
• • • •	• • •	•
Region IV: Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, and the U.S. territories and possessions in the Pacific.	USNRC, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011.	(817) 860–8100 (FTS) 728–8100
Region IV: Field Office	USNRC, Region IV, Uranium Recovery Field Office, 730 Simms Street, Suite 100a, Golden, CO 80401; Mail: P.O. Box 25325, Denver, CO 80225.	(303) 231–2805 (FTS) 554–2805
Region IV: Field Office	USNRC, Region IV, Walnut Creek Field Office, 1450 Maria Lane, Suite 300, Walnut Creek, CA 94596.	(510) 975–0200

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

5. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 30.6, paragraph (b)(2)(v) is removed and paragraph (b)(2)(iv) is revised to read as follows:

§ 30.6 Communications.

* * * * *

(b) * * *

(2) * * *

(iv) *Region IV.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region IV non-Agreement States and a territory: Alaska, Hawaii, Montana, Oklahoma, South Dakota, Wyoming, and Guam. All inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must be sent to: U.S. Nuclear Regulatory Commission, Region IV, Material Radiation Protection Section, 611 Ryan

Plaza Drive, Suite 400, Arlington, Texas 76011.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

7. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

8. In § 40.5, paragraph (b)(2)(v) is removed and paragraph (b)(2)(iv) is revised to read as follows:

§ 40.5 Communications.

* * * * *

(b) * * *

(2) * * *

(iv) *Region IV.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region IV non-Agreement States and a territory: Alaska, Hawaii, Montana, Oklahoma, South Dakota, Wyoming, and Guam. All inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must be sent to: U.S. Nuclear Regulatory Commission, Region IV, Material Radiation Protection Section, 611 Ryan Plaza Drive, suite 400, Arlington, Texas 76011.

PART 55—OPERATORS' LICENSES

9. The authority citation for part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

10. In § 55.5, paragraph (b)(2)(v) is removed and paragraphs (b)(1) and (b)(3)(ii) are revised to read as follows:

§ 55.5 Communications.

* * * * *

(b)(1) Except for test and research reactor facilities, the Director of Nuclear Reactor Regulation has delegated to the Regional Administrators of Regions I, II, III, and IV authority and responsibility pursuant to the regulations in this part for the issuance and renewal of licenses for operators and senior operators of nuclear power reactors licensed under 10 CFR part 50 and located in these regions.

* * * * *

(3) * * *

(ii) For all test and research reactor facilities located in Regions I, II, III, and IV, submissions must be made to the Director, Division of Licensee Performance and Quality Evaluation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Operator Licensing Branch.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

11. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–3772, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

12. In § 70.5, paragraph (b)(2)(v) is removed and paragraph (b)(2)(iv) is revised to read as follows:

§ 70.5 Communications.

* * * * *

(b) * * *

(2) * * *

(iv) *Region IV.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region IV non-Agreement States and a territory: Alaska, Hawaii, Montana, Oklahoma, South Dakota, Wyoming, and Guam. All inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must be sent to: U.S. Nuclear Regulatory Commission, Region IV, Material Radiation Protection Section, 611 Ryan Plaza Drive, suite 400, Arlington, Texas 76011.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

14. Appendix A to part 73 is amended by removing the Region V entry and revising the Region IV entry to read as follows:

APPENDIX A TO PART 73.—U.S. NUCLEAR REGULATORY COMMISSION REGIONAL OFFICES

	Address	Telephone (24 hour)
* * * * * * * *		
Region IV: Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, and the U.S. territories and possessions in the Pacific.	USNRC, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011.	(817) 860–8100 (FTS) 728–8100

APPENDIX A TO PART 73.—U.S. NUCLEAR REGULATORY COMMISSION REGIONAL OFFICES—Continued

	Address	Telephone (24 hour)
Region IV: Field Office	USNRC, Region IV Uranium Recovery Field Office, 730 Simms Street, Suite 100a, Golden, CO 80401; Mail: P.O. Box 25325, Denver, CO 80225.	(303) 231–2805 (FTS) 554–2805
Region IV: Field Office	USNRC, Region IV, Walnut Creek Field Office, 1450 Maria Lane, Suite 300, Walnut Creek, CA 94596.	(510) 975–0200

Dated at Rockville, Maryland, this 31st day of March, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–8845 Filed 4–12–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–29–AD; Amendment 39–8879; AD 94–08–07]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes Equipped With Honeywell Flight Management Computers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to ensure that the flight crews verify the accuracy of data provided by the Flight Management Computer (FMC) under certain conditions. This amendment is prompted by a report that certain FMC's may provide erroneous V speed data under certain conditions. The actions specified in this AD are intended to prevent the airplane from failing to achieve sufficient climb gradient, which may result in the airplane failing to achieve obstacle clearance.

DATES: Effective April 28, 1994.

Comments for inclusion in the Rules Docket must be received on or before June 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Thomas A. Enyart, Aerospace Engineer, Flight Test Branch, ANM–162L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5372; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Recently, an operator of McDonnell Douglas Model MD–11 series airplanes reported that certain Honeywell Flight Management Computers (FMC) provided erroneous V speed data when the anti-ice system was turned ON during flex (assumed) temperature takeoffs. Investigation into this problem revealed that the takeoff decision speed (V_1) could be as low as 12 knots below the V_1 speed data published in the FAA-approved Airplane Flight Manual (AFM), and the rotation speed (V_R) could be as low as 4 knots below the V_R speed data published in the FAA-approved AFM. An airplane rotating at low V_R speeds could reach 35 feet at a speed less than the published minimum safety speed (V_2). This condition, if not corrected, could result in these airplanes failing to achieve sufficient climb gradient, which may lead to these airplanes failing to achieve obstacle clearance.

The FMC's installed on Model MD–11 series airplanes are identical to those installed Model MD–11F series airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 and MD–11F series airplanes of the same type design equipped with certain Honeywell FMC's, this AD is being issued to prevent these airplanes from failing to achieve sufficient climb gradient, which may result in these airplanes failing to achieve obstacle clearance. This AD requires revising the FAA-approved AFM to ensure that the flight crews verify the accuracy of data provided by the FMC when the anti-ice system is turned ON during flex temperature takeoffs.

This is considered to be interim action. The manufacturer of these airplanes is currently developing new software, in concert with the manufacturer of the FMC, that will address the unsafe condition addressed by this AD. Once this software is developed, approved, and available, the FAA may consider additional rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the 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 AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–29–AD." The postcard will be date stamped and returned to the commenter.

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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–08–07 McDonnell Douglas: Amendment 39–8879. Docket 94–NM–29–AD.

Applicability: Model MD–11 and MD–11F series airplanes equipped with Honeywell Flight Management Computers having part numbers 4059050–906, –907, and –908; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from failing to achieve sufficient climb gradient, which may result in the airplane failing to achieve obstacle clearance, accomplish the following:

(a) Within 20 days after the effective date of this AD, revise the Limitations Section (Section 1) of the FAA-approved Airplane Flight Manual (AFM), page 5–1, FLIGHT GUIDANCE, Flight Management System (FMS) Section, to include the following information. This may be accomplished by inserting a copy of this AD or an FAA-approved McDonnell Douglas AFM revision in the AFM.

For any approved thrust level, the FMS computed V_1, V_R, and V_2 must be verified with AFM derived data, unless all of the following conditions are met:

- Dry Runway.
- Balanced Field Length.
- Ice Protection OFF.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on April 28, 1994.

Issued in Renton, Washington, on April 6, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8686 Filed 4–12–94; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Distribution of Property of Bankrupt Futures Commission Merchant That Had Participated in a Cross-Margining Program

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) has adopted an additional appendix to its bankruptcy rules to govern the distribution of property where the debtor is a futures commission merchant (FCM) that holds cross-margin (XM) accounts as well as non-XM accounts. This new distributional framework is intended to assure that non-XM customers of such an FCM will not be adversely affected by a shortfall in the pool of XM funds. The new distributional framework will become applicable to each non-proprietary XM program at such time as the relevant clearing organizations submit an amended participant agreement that makes reference to the new distributional framework and such agreement is approved by the Commission.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or John C. Lawton, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 28, 1993, the Commission published a proposed additional appendix to its bankruptcy rules that would govern the distribution of property where the debtor is an FCM that holds XM accounts as well as non-XM accounts and allowed thirty days for comment thereon.[1] The Commission received one written comment in response to the proposal, from the Chicago Board Options Exchange (CBOE), which expressed support for the proposal. The Commission has carefully considered this comment and, based upon that review and its own reconsideration of the issue, has determined to adopt the additional

[1] 58 FR 68580.

appendix to its bankruptcy rules essentially as proposed.

II. Background of XM Programs

In XM programs, intermarket positions with offsetting risk characteristics are margined together as a single portfolio. These intermarket positions include stock index futures, options on stock index futures and stock index options, as well as foreign currency futures, options on foreign currency futures and foreign currency options. Because the related intermarket positions are essentially offsetting and therefore may effectively serve as margin collateral for one another, the margin requirement for the combined position may be lower than if each were margined separately.

Currently, there generally are two types of XM programs—proprietary and non-proprietary.[2] In proprietary programs, XM treatment is given to intermarket positions in proprietary (*i.e.*, non-customer) accounts maintained by participating clearing members. With non-proprietary XM programs, XM treatment is given at the clearing organization level for intermarket positions maintained by clearing members for market professionals.

III. Previous Bankruptcy Distribution in the Context of XM Programs

Under the various non-proprietary XM programs, the futures trades and securities positions of eligible market professionals are deemed to be customer property under section 4d(2) of the Commodity Exchange Act[3] and any customer net equity claim which a participating market professional has in respect of XM property held by a clearing firm in a non-proprietary XM account must be treated as a customer net equity claim under part 190 of the Commission's rules[4] and subchapter IV of chapter 7 of the Bankruptcy Code (the commodity broker liquidation provisions).[5] In the case of an FCM bankruptcy, the commodity broker liquidation provisions of the Bankruptcy Code and part 190 of the Commission's rules provide for a pro rata distribution of assets among the section 4d(2) customers whose accounts are carried by such FCM. Thus, absent some provision to the contrary, if a participating clearing member defaulted due to losses in its non-proprietary XM account, non-XM customers could be forced to share in those losses.[6]

In order to avoid this possibility, Commission orders approving each of the current non-proprietary XM programs have required participating market professionals to execute agreements whereby they subordinate their XM-related claims to customer claims based on non-XM positions in the event of the clearing member's bankruptcy. The net equity claims of non-XM customers thus have been accorded priority over the net equity claims of XM customers.

The relevant Commission orders approving the various cross-margin programs and various subordination agreements, as prescribed by relevant exchange rules, among market professionals, their clearing members and the clearing organizations involved, established the previous bankruptcy distribution framework. In the case of the bankruptcy of a clearing member participating in a non-proprietary XM program, the trustee would marshal all of the assets that were available to satisfy customer claims as set forth in Commission Rule 190.08 (whether such funds derived from XM customers, non-XM customers or any other available source and irrespective of whether the shortfall in the segregated funds accounts were attributable to XM or non-XM customers). The trustee would determine if there were sufficient funds to satisfy in full the net equity claims of all non-XM customers cleared by the clearing member. If all such net equity claims of non-XM customers could be satisfied in full, the trustee would make the appropriate distributions and market professionals who participated in an XM program would receive any remaining funds to be shared on a pro rata basis. If there were not sufficient funds to satisfy non-XM net equity claims in full, the trustee would distribute to the non-XM customers only whatever funds were available on a pro rata basis and market professionals participating in the XM program would receive nothing.

The result of the market professionals' subordination required by the Commission orders has been that the market professionals' XM-related assets would be included within the pool of customer funds available to meet the claims of the clearing member's non-XM customers.[7] Upon satisfaction of these "regular" customer claims, any excess customer property would be distributed to the various market professionals cleared by the defaulting member based upon their XM-related claims consistent with the pro rata distribution scheme of the Bankruptcy Code and part 190 of the Commission's rules. Thus, non-XM customers would never receive less than they would have received in the absence of an XM program.[8]

IV. New Bankruptcy Distribution in the Context of XM Programs

When the Commission adopted its part 190 bankruptcy rules,[9] it included an appendix intended to facilitate a trustee's operation of the estate of a bankrupt commodity broker. This appendix includes a schedule of trustee's duties, forms concerning customer instructions for return of non-

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[2] The Commission has approved a number of proprietary XM programs between futures clearing organizations and the Options Clearing Corporation (OCC), a clearing organization for options listed on the American Stock Exchange, Chicago Board Options Exchange, New York Stock Exchange, Pacific Stock Exchange and Philadelphia Stock Exchange. To date, the Commission has approved proprietary XM programs between the OCC and the following futures clearing organizations: Intermarket Clearing Corporation (ICC) (June 1, 1988); Chicago Mercantile Exchange (CME) (September 26, 1989); Board of Trade Clearing Corporation (BOTCC) (October 31, 1991); Kansas City Board of Trade Clearing Corporation (KCBTCC) (February 25, 1992); and Comex Clearing Association (September 9, 1992). The Commission has also approved trilateral proprietary XM programs among the CME, ICC and OCC (June 2, 1993) and among the Commodity Clearing Corporation (CCC), ICC and OCC (December 28, 1993).

Similarly, the Commission has approved non-proprietary XM programs between OCC and the following futures clearing organizations: CME (November 26, 1991); ICC (November 26, 1991); BOTCC (July 21, 1993); and KCBTCC (July 21, 1993). The Commission has also approved trilateral non-proprietary XM programs among CME, ICC and OCC (June 2, 1993) and among CCC, ICC and OCC (December 28, 1993).

[3] 7 U.S.C. 6d(2) (1988).

[4] 17 CFR part 190.

[5] Without some contrary provision, the assets of a securities broker-dealer who cleared the options trades of a cross-margining market professional would be distributed in the event of a bankruptcy pursuant to subchapter III of chapter 7 of the Bankruptcy Code, 11 U.S.C. 741–752 (1988), or the Securities Investors Protection Act (SIPA), 15 U.S.C. 78aaa *et seq.* (1988). In order for a securities broker-dealer to participate in a non-proprietary XM program, it must elect customer property treatment under part 190 of the Commission's rules in lieu of under SIPA, as further discussed below.

[6] 11 U.S.C. 761–766 (1988). See, *e.g.*, Commission Order, In the Matter of the Chicago Mercantile Exchange Proposal to Expand its Cross-Margining Program with the Options Clearing Corporation to Include the Cross-Exchange Net Margining of the Positions of Market Professionals at 9 (November 26, 1991), reprinted in 56 FR 61404, 61406 (December 3, 1991), and Commission Order, In the Matter of The Intermarket Clearing Corporation Proposal to Expand its Cross-Margining Program with the Options Clearing Corporation to Include the Cross-Exchange Net Margining of the Positions of Market Professionals at 9 (November 26, 1991), reprinted in 56 FR 61406, 61408 (December 3, 1991).

[7] Market professionals also would be included within this group of customers to the extent they had non-XM related customer claims.

[8] Where there is a shortfall in the amount of funds in segregation attributable to non-XM customers and there are remaining funds in segregation attributable to XM customers, non-XM customers could achieve a greater distribution than if there were no XM program and subordination agreement.

[9] 48 FR 8716 (March 1, 1983).

cash property and transfer of hedge contracts, and a proof of claim form. The Commission has now adopted a new appendix to part 190 to provide further guidance to a trustee of a bankrupt FCM with respect to the appropriate distribution of property where the FCM had been a participant in an XM program that includes non-proprietary positions. As described above, such programs are now numerous and include non-proprietary positions in certain instances and where they do so, participating market professionals have been required by Commission order, among other things, to execute agreements whereby they subordinate their XM-related claims to the claims of non-XM customers in the event of bankruptcy in all instances.

The new bankruptcy appendix will continue the concept of subordination for purposes of assuring treatment of the market professionals' securities included in an XM account as part of the commodity estate, but will modify the method for distribution of property of a bankrupt FCM which had participated in an XM program that includes non-proprietary positions such that the subordination to futures customers in the event of bankruptcy is more limited. However, the Commission orders and the clearing organization rules will continue to require each market professional participating in an XM program to agree that all of his XM assets carried by his clearing member, including securities options, will not be deemed to be "customer property" under SIPA and will be treated pursuant to the commodity broker liquidation provisions of the Bankruptcy Code. Thus, the market professional will remain removed from the class of customers whose claims will be disposed of pursuant to SIPA [10] and, accordingly, the market professional's XM assets carried by a securities broker-dealer would continue to be considered as other than SIPA customer property, since such property is defined to include only cash or securities held for the account of a SIPA customer.[11]

The guiding principles of the new appendix to part 190 are to assure that there is generally pro rata distribution to customers of the customer funds in the bankrupt FCM's commodity interest estate and that non-XM customers of such an FCM are not adversely affected by a shortfall in the pool of XM funds. The new appendix preserves the principle that non-XM customers will never receive less than they would have received in the absence of an XM program, but the distributional rule will not require market professionals participating in XM programs to subordinate claims they may make for customer property in all instances.

Under the new appendix, a bankruptcy trustee handling the commodity interest estate of a bankrupt FCM with XM customer funds must first determine the respective shortfalls, if any, in the pools of XM customer and non-XM customer segregated funds. The trustee then would calculate the shortfall in each pool as a percentage of the segregation requirement for the pool. If there were no shortfall in either of the two pools; if there were an equal percentage shortfall in the two pools; if there were a shortfall in the non-XM pool only; or if the percentage of shortfall were greater in the non-XM pool than in the XM pool, the two pools of segregated funds would be combined and XM customers and non-XM customers would share pro rata in the combined pool.[12] However, if there were a shortfall in the XM pool only, or if the percentage of shortfall were greater in the XM pool than in the non-XM pool, the two pools of segregated funds would not be combined.[13] Rather, XM customers would share pro rata in the pool of XM segregated funds, while non-XM customers would share pro rata in the pool of non-XM segregated funds. To facilitate this distributional framework, subclasses of customer accounts, an XM account and a non-XM account, would be recognized.[14]

As with the previous distribution system for a bankrupt FCM with XM-related claims, the new appendix ensures that non-XM customers will never receive less than they would have received in the absence of an XM program. Of course, without the specific subordination of XM customer claims to non-XM customer claims in all cases by market professionals participating in XM programs, non-XM customers will, depending upon the circumstances, receive either equivalent or less favorable distributions under the approach of the new appendix than they would have received under the Commission's previous bankruptcy distribution for FCMs participating in an XM program. In those cases where there is no shortfall in the non-XM pool (see Examples 1 and 3), the distribution to non-XM customers will be the same under the new appendix as it has been previously. However, in those cases where there is a shortfall in the non-XM pool, the pro rata distribution across the combined XM and non-XM pools (see Examples 2, 5 and 6) or the separate treatment of the XM and non-XM pools and the XM and non-XM account subclasses (see Example 4) will generally mean a less favorable distribution to the non-XM customers than has been previously required.[15] This is the result because there will no longer be a marshalling of all assets available from segregated funds, including those attributable to XM customers, to satisfy all claims from non-XM customers before any claim of an XM customer can be satisfied. The Commission believes these outcomes are fair to all parties involved and consistent with general bankruptcy principles, and that they eliminate the need for execution of a separate subordination agreement to comply with section 4d(2) of the Commodity Exchange Act once participating market professionals elect "commodity" customer treatment for the XM account.

In order for the participants in a particular non-proprietary XM program to be covered by the new bankruptcy distributional rule, the clearing organizations operating the program must submit an amended form of participant agreement deleting the provision requiring that a customer net equity claim of a participating market professional be subordinated to the customer net equity claims of "public customers" that do not relate to XM property and substituting a reference to the distributional rule set forth in the new appendix B. As the Commission indicated when it proposed the new appendix, it is prepared to modify its

[10] Specifically, SIPA excludes a person from the definition of a SIPA customer "to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law * * * is subordinated to the claims of any or all creditors of the debtor * * *." 15 U.S.C. 78*lll*(2)(B)(1988).

[11] 15 U.S.C. 78*lll*(4); Securities Exchange Act Release No. 34–29991, 56 FR 61458 (December 3, 1991); Securities Exchange Act Release No. 34–30041, 56 FR 64824 (December 12, 1991). See also Memorandum Recommending Approval of the Chicago Mercantile Exchange's and the Intermarket Clearing Corporation's Proposals to Expand Their Respective Cross-Margining Programs with the Options Clearing Corporation to Include the Cross-Exchange Net Margining of the Positions of Certain Market Professionals at 68–69, reprinted in [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,190 at 38,504–38,505 (November 21, 1991).

[12] See Examples 1, 6, 2 and 5 of appendix B to part 190, Framework 1.

[13] See Examples 3 and 4 of appendix B to part 190, Framework 1.

[14] As noted above, CBOE filed the only written comment on the Commission's proposal, expressing support. However, CBOE also stated its belief that the two pools of segregated funds should be treated separately in all instances, which would result in more favorable treatment of XM customers in Examples 2 and 5.

[15] Of course, if there were no segregated funds available at all attributable to XM customers, which could be the case in extreme circumstances under Examples 4 or 6, there would also be no difference in the distribution to non-XM customers as a result of the new appendix.

orders relating to non-proprietary XM programs accordingly upon receipt from the relevant clearing organizations of such amended participant agreements. The Commission believes the procedure requiring approval of amended participant agreements is necessary to eliminate any possible confusion for a trustee as to which distributional rule to follow in the unlikely event of a bankruptcy of an FCM participating in a non-proprietary XM program after the effective date of the new appendix B but before an amended participant agreement is approved by Commission order.

The Commission has consulted with the Securities and Exchange Commission (SEC) and the Securities Investor Protection Corporation and believes that this change will not adversely affect continued treatment of XM funds under the commodity broker, rather than the securities broker-dealer, liquidation provisions of the Bankruptcy Code. The Commission also understands that the OCC will submit conforming rule changes to the SEC to eliminate the subordination to public customer requirement from its approval order.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These rules will affect distributees of a bankrupt FCM's estate where the FCM had participated in an XM program. Previously, market professionals with an XM account were required to subordinate their claims in a bankruptcy to those of non-XM customers in all instances, so the new rules which modify the subordination requirement should not adversely impact such market professionals. Further, the distributional framework is intended to assure that non-XM customers of such FCM will not be adversely affected by a shortfall in the pool of XM funds and thus there should not be a significant economic impact on such customers as a result of the adoption of these rules. Therefore, the action taken herein will not have a significant economic impact on a substantial number of small entities. When the Commission published its proposal, it invited comments from any person or entity which believed that the proposal would have a significant impact on its operations. No comments on this issue were filed.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission submitted these rules in proposed form and their associated information collection requirements to the Office of Management and Budget. While these rules have no burden, the group of rules of which these rules are a part has the following burden:

Rules 190.06 and 190.10 (3038–0021):
Average Burden Hours Per Response..... .35
Number of Respondents..... 802
Frequency of Response..... occasionally

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K St. NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 190

Bankruptcy.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 2(a), 4c, 4d, 4g, 5, e, 8a, 15, 19 and 20 thereof, 7 U.S.C. 1a, 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1988 & Supp. IV 1992), and in the Bankruptcy Code and, in particular, Sections 362, 546, 548, 556 and 761–766 thereof, 11 U.S.C. 362, 546, 548, 556 and 761–766 (1988), hereby amends part 190 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 190—BANKRUPTCY

1. The authority citation for part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23 and 24 and 11 U.S.C. 362, 546, 548, 556 and 761–766.

2. Section 190.08 is amended by revising the introductory text to read as follows:

§ 190.08 Allocation of property and allowance of claims.

The property of the debtor's estate must be allocated among account classes and between customer classes as provided in this section, except for special distributions required under Appendix B to this part. The property so allocated will constitute a separate estate of the customer class and the account class to which it is allocated, and will be designated by reference to such customer class and account class.

* * * * *

3. Part 190 is amended by designating appendix to part 190 as appendix A to part 190 and revising the heading and by adding appendix B to part 190 to read as follows:

Appendix A to Part 190—Bankruptcy Forms

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Appendix B to Part 190—Special Bankruptcy Distributions

Framework 1—Special Distribution of Customer Funds When FCM Participated in Cross-Margining

The Commission has established the following distributional convention with respect to customer funds held by a futures commission merchant (FCM) that participated in a cross-margining (XM) program which shall apply if participating market professionals sign an agreement that makes reference to this distributional rule and the form of such agreement has been approved by the Commission by rule, regulation or order:

All customer funds held in respect of XM accounts, regardless of the product that customers holding such accounts are trading, are required by Commission order to be segregated separately from all other customer segregated funds. For purposes of this distributional rule, XM accounts will be deemed to be commodity interest accounts and securities held in XM accounts will be deemed to be received by the FCM to margin, guarantee or secure commodity interest contracts. The maintenance of property in an XM account will result in subordination of the claim for such property to certain non-XM customer claims and thereby will operate to cause such XM claim not to be treated as a customer claim for purposes of the Securities Investors Protection Act and the XM securities to be excluded from the securities estate. This creates subclasses of customer accounts, an XM account and a non-XM account (a person could hold each type of account), and results in two pools of customer segregated funds: An XM pool and a non-XM pool. In the event that there is a shortfall in the non-XM pool of customer class segregated funds and there is no shortfall in the XM pool of customer segregated funds, all customer net equity claims, whether or not they arise out of the XM subclass of accounts,

will be combined and will be paid pro rata out of the total pool of available XM and non-XM customer funds. In the event that there is a shortfall in the XM pool of customer segregated funds and there is no shortfall in the non-XM pool of customer segregated funds, then customer net equity claims arising from the XM subclass of accounts shall be satisfied first from the XM pool of customer segregated funds, and customer net equity claims arising from the non-XM subclass of accounts shall be satisfied first from the non-XM customer segregated funds. Furthermore, in the event that there is a shortfall in both the non-XM and XM pools of customer segregated funds: (1) If the non-XM shortfall as a percentage of the segregation requirement in the non-XM pool is greater than or equal to the XM shortfall as a percentage of the segregation requirement in the XM pool, all customer net equity claims will be paid pro rata; and (2) if the XM shortfall as a percentage of the segregation requirement in the XM pool is greater than the non-XM shortfall as a percentage of the segregation requirement of the non-XM pool, non-XM customer net equity claims will be paid pro rata out of the available non-XM segregated funds, and XM customer net equity claims will be paid pro rata out of the available XM segregated funds. In this way, non-XM customers will never be adversely affected by an XM shortfall.

The following examples illustrate the operation of this convention. The examples assume that the FCM has two customers, one with exclusively XM accounts and one with exclusively non-XM accounts. However, the examples would apply equally if there were only one customer, with both an XM account and a non-XM account.

1. Sufficient Funds to Meet Non-XM and XM Customer Claims:

	Non-XM	XM	Total
Funds in segregation	150	150	300
Segregation requirement	150	150	300
Shortfall (dollars)	0	0	
Shortfall (percent)	0	0	
Distribution	150	150	300

There are adequate funds available and both the non-XM and the XM customer claims will be paid in full.

2. Shortfall in Non-XM Only:

	Non-XM	XM	Total
Funds in segregation	100	150	250
Segregation requirement	150	150	300
Shortfall (dollars)	50	0	
Shortfall (percent)	50/150=33.3	0	
Pro rata (percent)	150/300=50	150/300=50	
Pro rata (dollars)	125	125	
Distribution	125	125	250

Due to the non-XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Each customer will receive his pro rata share of the funds available, or 50% of the $250 available, or $125.

3. Shortfall in XM Only:

	Non-XM	XM	Total
Funds in segregation	150	100	250
Segregation requirement	150	150	300
Shortfall (dollars)	0	50	
Shortfall (percent)	0	50/150=33.3	
Pro rata (percent)	150/300=50	150/300=50	
Pro rata (dollars)	125	125	
Distribution	150	100	250

Due to the XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Accordingly, the XM funds and non-XM funds are treated as separate pools, and the non-XM customer will be paid in full, receiving $150 while the XM customer will receive the remaining $100.

4. Shortfall in Both, With XM Shortfall Exceeding Non-XM Shortfall:

	Non-XM	XM	Total
Funds in segregation	125	100	225
Segregation requirement	150	150	300
Shortfall (dollars)	25	50	
Shortfall (percent)	25/150=16.7	50/150=33.3	
Pro rata (percent)	150/300=50	150/300=50	
Pro rata (dollars)	112.50	112.50	
Distribution	125	100	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the XM shortfall exceeds the non-XM shortfall. The non-XM customer will receive the $125 available with respect to non-XM claims while the XM customer will receive the $100 available with respect to XM claims.

5. Shortfall in Both, With Non-XM Shortfall Exceeding XM Shortfall:

	Non-XM	XM	Total
Funds in segregation	100	125	225
Segregation requirement	150	150	300
Shortfall (dollars)	50	25	.....
Shortfall (percent)	50/150=33.3	25/150=16.7	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	112.50	112.50	.....
Distribution	112.50	112.50	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall exceeds the XM shortfall. Each customer will receive 50% of the $225 available, or $112.50.

6. Shortfall in Both, Non-XM Shortfall = XM Shortfall:

	Non-XM	XM	Total
Funds in segregation	100	100	200
Segregation requirement	150	150	300
Shortfall (dollars)	50	50	.....
Shortfall (percent)	50/150=33.3	50/150=33.3	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	100	100	.....
Distribution	100	100	200

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall equals the XM shortfall. Each customer will receive 50% of the $200 available, or $100.

These examples illustrate the principle that pro rata distribution across both accounts is the preferable approach except when a shortfall in the XM account could harm non-XM customers. Thus, pro rata distribution occurs in Examples 1, 2, 5 and 6. Separate treatment of the XM and non-XM accounts occurs in Examples 3 and 4.

Issued in Washington, DC on April 7, 1994 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–8783 Filed 4–12–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 94–40]

RIN 1515–AB45

Duty-Free Treatment To Be Accorded the Reimportation of Certain Articles Originally Imported Duty Free

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement a provision of the Trade and Tariff Act of 1984 that extends duty-free entry to the reimportation of certain articles originally imported duty free.

EFFECTIVE DATE: April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Burton Schlissel, Special Classification Branch, Office of Regulations and Rulings, (202) 482–6980.

SUPPLEMENTARY INFORMATION:

Background

For many years U.S. law, specifically, subheading 9801.00.20 of the Harmonized Tariff Schedule of the United States (HTSUS) and its predecessor tariff provision, item 801.00 of the Tariff Schedules of the United States (TSUS), has not imposed a tariff on articles reimported into the United States if, after exportation, they were not advanced in value or improved in condition by any process of manufacture or other means while abroad. This provision, in effect, sought to avoid double taxation/duty of such articles.

Subsequent to the promulgation of item 801.00, TSUS, Congress enacted two duty preference schemes—the Caribbean Basin Initiative or CBI (enacted as the Caribbean Basin Economic Recovery Act (CBERA), 19 U.S.C. 2701–2706) and the Generalized System of Preferences or GSP (19 U.S.C. 2461–2466)—that also provide duty-free treatment for certain imports from designated beneficiary developing countries (BDCs). Item 801.00, TSUS, however, was drafted in language that precluded its application to articles that were entered duty free in the first instance. Thus, item 801.00, TSUS, operates to frustrate the purpose of those preference programs of encouraging development through trade.

The Trade and Tariff Act of 1984 (the Act), 19 U.S.C. 1654 note, Public Law 98–573, 98 Stat. 2948, approved October 30, 1984, and effective as provided, was enacted to change the tariff treatment accorded certain articles and for other purposes. Section 118 of the Act, entitled "Reimportation of certain articles originally imported duty free" and effective November 14, 1984, sought to correct the unanticipated discriminatory effects of item 801.00, TSUS, on eligible products from BDCs by amending that provision to extend duty-free treatment to goods which were previously entered free of duty pursuant to the CBI and GSP preference programs.

Section 10.108 of the Customs Regulations (19 CFR 10.108) pertains to the entry of reimported articles exported under lease, but has not been amended to reflect the provisions of section 118 of the Act. Accordingly, § 10.108 is amended to enable articles initially entered duty free under the CBI and GSP programs to be exported and reimported duty free, provided the other requirements of subheading 9801.00.20 are complied with.

Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because this amendment merely reflects a statutory requirement that confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are not required. Further, for the same reasons,

good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment is not a significant regulatory action as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Exports, Foreign relations, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements (Caribbean Basin Initiative, Generalized System of Preferences).

Amendment to the Regulations

To implement the provisions of section 118 of the Trade and Tariff Act of 1984, part 10, Customs Regulations (19 CFR part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. Section 10.108 is revised to read as follows:

§ 10.108 Entry of reimported articles exported under lease.

Free entry shall be accorded under subheading 9801.00.20, Harmonized Tariff Schedule of the United States (HTSUS), whenever it is established to the satisfaction of the district director that the article for which free entry is claimed was duty paid on a previous importation or was previously entered free of duty pursuant to the Caribbean Basin Economic Recovery Act or Title V of the Trade Act of 1974, is being reimported without having been advanced in value or improved in condition by any process of manufacture or other means, was exported from the United States under a lease or similar use agreement, and is being reimported by or for the account of the person who imported it into, and exported it from, the United States.

Approved: March 29, 1994.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–8808 Filed 4–12–94; 8:45 am]

BILLING CODE 4820–02–P

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19 CFR Part 142

[T.D. 94–39]

Identifying Information Required on Entry Documents

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document sets forth examples that correctly identify the party in the U.S. to whom imported merchandise is sold or consigned, or the premises in the U.S. to which it is delivered. This information is required by regulation to be shown on Customs entry or release documents for the merchandise.

EFFECTIVE DATE: April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Lou Samenfink, Office of Cargo Enforcement and Facilitation, (202–927–0510).

SUPPLEMENTARY INFORMATION:

Background

Merchandise imported and entered for consumption must be supported by Customs entry and entry summary documentation. Briefly stated, this entry documentation is detailed in § 142.3, Customs Regulations (19 CFR 142.3), and consists of the information which must be filed with Customs to secure the release of imported merchandise from Customs custody (19 CFR 141.0a(a)); entry summary documentation is that which must be filed in order to enable Customs to assess duties, and collect statistics with respect to the merchandise, and to determine whether other requirements of law or regulation are met (19 CFR 141.0a(b)).

In addition, in certain circumstances as enumerated in § 142.21, Customs Regulations (19 CFR 142.21), merchandise may be initially released under a special permit for immediate delivery, in accordance with § 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), and in these circumstances as well, the information required by § 142.3 must be provided, except that a commercial invoice need not be submitted at such time (see 19 CFR 142.22(a)).

Customs capability to identify fully all parties involved with imported merchandise being entered or released is essential in order to support investigative efficiency. Information concerning the party in the U.S. to whom such merchandise is sold or consigned represents one of several elements which Customs considers in the process of assessing the risks associated with the transaction and determining the appropriate level of examination to be accorded the merchandise involved. This process is known generally as "cargo selectivity".

In this latter regard, principally to correct a problem on the Northern Border, § 142.3 was amended by T.D. 90–92, 55 FR 49879, to add a new paragraph (a)(6), in order to specifically require that entry or release documents set forth the identity, including the importer identification number, of the party in the U.S. to whom the imported merchandise is sold or consigned, or if this is unknown at the time of entry or release, the premises in the U.S. to which the merchandise is delivered.

Under § 142.3(a)(6), the required information, including the appropriate importer identification number or numbers, must be provided for each entry of imported merchandise processed through cargo selectivity, whether the entry is electronically or manually transmitted to Customs.

In particular, for a consolidated entry, where the entry is made listing one broker or freight forwarder as consignee, the required information must be submitted for each separate and distinct shipment within the consolidated shipment.

The notice of proposed rulemaking which led to the final rule adopting § 142.3(a)(6) set forth seven examples which were designed and intended to illustrate the application of the identification requirement contained in this regulation (55 FR 2528, 2529). These examples, however, were dropped from the final rule because they created confusion on the part of the brokerage community as to which party should be identified in some of the more complex import transactions (T.D. 90–92, 55 FR 49879, 49883). However, it was noted in the final rule that examples meeting the needs of both Customs and the trade would be developed and issued separately (*ibid.*).

Accordingly, after working with the trade community in this endeavor, Customs published a notice of clarification in the **Federal Register** on July 29, 1992 (57 FR 33463), proposing, and asking for public comment on, a number of examples intended to effectively illustrate the correct application of § 142.3(a)(6).

A total of twelve commenters responded during the public comment period. A number of the comments made were outside the scope of the notice, inasmuch as they did not address or concern the examples themselves. A description of the specific issues that were raised with respect to these examples, together with Customs response, is set forth below.

Discussion of Comments

Comment: One commenter requested an explanation of the procedures for including the ultimate consignee on the entry documents when there are multiple ultimate consignees (both electronically via the Automated Commercial System and on the paperwork).

Response: While this comment is beyond the scope of this notice, as a result of the passage of the Customs modernization portion of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, Title VI), Customs will be undertaking a broad-based review of its regulations. This comment would be more appropriately addressed at that time.

Comment: One commenter wanted to know what would happen if a "customer" refuses to give his ultimate consignee number or power of attorney to his broker.

Response: If the ultimate consignee number is not provided on the required entry documents, the documentation shall not be considered to be filed in proper form and shall be returned to the importer for correction pursuant to § 141.64, Customs Regulations (19 CFR 141.64).

Comment: Examples 2, 5 and 11 (now 10) are cited as situations where the Canadian shipper should be listed as the ultimate consignee.

Response: It would not be possible for the foreign shipper to be listed as the consignee or ultimate consignee on entry documents at the time of immediate delivery, entry or release. The notice of clarification indicated the party in the United States to whom merchandise is sold or consigned. It is this party who is required to be identified in the entry documents.

Comment: Example 9 is cited as a case where a Canadian company is listed on the entry documents as the buyer. The merchandise is shipped to a trucking company in the United States, presumably for shipment to the buyer in Canada. It is suggested that the Canadian buyer be listed as the ultimate consignee on U.S. entry documents.

Response: The U.S. trucking company is properly listed as the ultimate consignee in this situation. Customs Regulations call for using the premises to which the merchandise is to be delivered in the United States as the effective ultimate consignee on the entry, when there is no known U.S. buyer at the time of immediate delivery, entry or release.

Comment: It was requested that a new example be issued for entries filed on merchandise that arrives by pipeline.

Response: The examples do not cover this because the mode of transportation is not a factor in identifying the ultimate consignee.

Comment: One commenter gave examples where the consignee or premises could change after the entry has been processed.

Response: It is the party to whom the merchandise is sold or consigned, or the premises to which it is to be delivered, at the time of entry or release, which must be listed in the Customs entry or release documents.

Comment: One commenter wanted to know who the consignee would be if an importer was shipping merchandise from Canada "directly" to Mexico, through the United States, and chose to make a consumption entry. The commenter pointed out that the merchandise might be free of duty and both the client and the carrier might not want the shipment to move in-bond.

Response: A situation where a shipment moves from the point of entry to exportation from the United States is outside the scope of § 142.3(a)(6). Consequently, Customs will establish a procedure to accommodate importers who wish to file a consumption entry for merchandise that will transit the United States.

Conclusion

After careful consideration of the comments received and further review of the matter, Customs has determined to adopt the examples without substantive change, with the exception of one example (Example 10 in the notice of clarification) which is removed because the special steel invoice the subject thereof is no longer being used. The succeeding examples are renumbered accordingly. In addition, the following two typographical errors are corrected: in Example 5, the reference to "Example 4" is changed to "Example 3"; and in Example 9, the second sentence beginning with "Acme shops" is changed to "Acme ships".

Examples

Example 1. ABC Company, a distributor of telephone equipment located in Seattle, Washington, places an order with Canadian Bell Limited of Vancouver, Canada, and arranges for the importing carrier to deliver the goods directly to several customers of ABC Company in the U.S.

ABC Company is the ultimate consignee for Customs purposes, since that is the party which purchased the merchandise from the Canadian shipper.

Example 2. XYZ Limited is a Canadian company which produces and delivers baked goods to twenty retail food stores in the U.S. on a daily basis.

Since the baked goods are ordered/purchased separately from the Canadian supplier by the individual stores in the U.S., each of these stores is the ultimate consignee for Customs purposes.

Example 3. Montreal Furniture Company, a Canadian manufacturer of office furniture, leases storage space at the Champlain Warehouse Service in Champlain, New York. As orders are received from customers in the U.S., delivery is made from the Champlain storage facility.

The Champlain Warehouse Service should be shown on the entry or release documents in accordance with § 142.3(a)(6), since there is no known buyer of the merchandise at the time of its importation and those are the premises in the U.S. to which the imported goods are being delivered.

Example 4. Calgary Instruments Limited ships a small parcel containing a medical instrument to the UPS (United Parcel Service) hub in Sweetgrass, Montana, for subsequent delivery to Memorial Hospital in Great Falls, Montana. Reliable Broker is the importer of record for this shipment.

Memorial Hospital is the ultimate consignee for this shipment, since it is the purchasing party, and UPS is merely a nominal consignee in the transaction.

Example 5. An employee of Ontario Jewelry Sales Limited of Mississauga, Canada, imports in her personal baggage a collection of diamonds for display and possible sale at a jewelry exhibition taking place at the Intercontinental Hotel in Manhattan, New York.

As in Example 3, since this shipment is not being imported subject to a contract of purchase or delivery at the time of importation, the Intercontinental Hotel should be shown on the entry or release documents in accordance with § 142.3(a)(6), since that is the place to which the diamonds are being delivered.

Example 6. The Wilkins Fur Company, Limited, of Toronto, ships twenty mink coats to the Williamson Exposition Company of Boston, which is handling the arrangements for a trade fair on behalf of the National Association of Fur Garment Wholesalers

to be held at the Plaza Hotel in New York City.

Since there is no known buyer at the time of importation of the mink coats, the Williamson Exposition Company of Boston should be shown on the entry or release documents in accordance with § 142.3(a)(6), since that is the entity to which the coats are consigned.

Example 7. Manitoba Auto Supply of Winnipeg ships ignition kits to the U.S. The buyer shown on the invoice is Minneapolis Auto Specialties of 2800 Hennepin, Minneapolis, Minnesota. Marty's Car Parts in Racine, Wisconsin, is shown as the "ship to" party.

As in Example 1, the ultimate consignee for Customs purposes is Minneapolis Auto Specialties, since that is the party which purchased the merchandise from the Canadian shipper.

Example 8. Manitoba Auto Supply ships ignition kits to Minneapolis Auto Specialties in Duluth, Minnesota. The buyer shown on the invoice is Minneapolis Auto Specialties located at 2800 Hennepin in Minneapolis, Minnesota.

As in Example 7, Minneapolis Auto Specialties in Minneapolis is the ultimate consignee since that is the party in the U.S. which purchased the merchandise.

Example 9. Acme Compressor Company, Limited, of Edmonton, Alberta, buys an air compressor from the Trucking Supply Company of Regina, Saskatchewan, and is listed as the buyer on the invoice. Acme ships the compressor to the Lindquist Trucking Company in Ambrose, North Dakota.

The Lindquist Trucking Company should be shown on the entry or release documents in accordance with § 142.3(a)(6), since that is the place in the U.S. to which the goods are being delivered.

Example 10. Beauty Limited of Montreal, Quebec, sells a shipment of cosmetics to Total Woman, Inc. (a U.S. company) in care of (c/o) Unique Image of Albany, New York. There is no address listed on the invoice for the buyer, Total Woman, Inc.

The ultimate consignee in this case is Total Woman, Inc., which is the buyer in this transaction. Its name and address must therefore be included on the Customs entry or release documents.

Example 11. Spring Water Company of Los Angeles purchases a load of bottled water from Healthy Water Limited of Calgary, Alberta. The address of Spring Water Company is listed as a post office box in Los Angeles. The water is shipped to Ralph's Grocery Store on Sepulveda Boulevard in Los Angeles.

The ultimate consignee is Spring Water Company of Los Angeles as the U.S. buyer of the water, regardless of the fact that its address shows a post office box.

Example 12. FTX Company in Mexico City ships a load of door knobs to the Rio Company in El Paso, Texas. There are no other parties located in the U.S. shown on the invoice.

The Rio Company should be shown on the entry or release documents in accordance with § 142.3(a)(6) since there is no known buyer of the merchandise at the time of its importation and those are the premises in the U.S. to which the imported goods are being delivered. However, if there is a known buyer that name must be used.

Example 13. ABC Garments of Edmonton, Alberta, manufactures children's clothing and sells to small boutiques in the U.S. These boutiques place orders (usually small) with ABC Garments which will accumulate a number of orders before sending them as a consolidated shipment with their customhouse broker listed as consignee.

Although § 141.51, Customs Regulations (19 CFR 141.51), allows all merchandise arriving on one vessel and consigned to one consignee (in this case, the broker) to be included in one entry, the ultimate consignee (*i.e.*, the person to whom the merchandise is sold) for each shipment in the consolidated entry must be provided to Customs in accordance with §§ 141.86(a)(2) and 142.3(a)(6), Customs Regulations (19 CFR 141.86(a)(2) and 142.3(a)(6)). Furthermore, pursuant to §§ 24.5(a) and 142.3(a)(6), Customs Regulations (19 CFR 24.5(a) and 142.3(a)(6)), a Customs Form 5106 would also have to be filed for each ultimate consignee for which entry is made.

Example 14. Through Quicksilver Delivery, an international courier company, Just Fabrics, Limited, of Montreal, ships a parcel of fabric cuttings to Dresses-Are-Us in London, England. Dresses-Are-Us is listed as the destination party on the invoice. After Customs clearance, the parcel is forwarded to England by A–1 Freight Forwarders of Buffalo, New York.

Because there is no known buyer in the U.S., A–1 Freight Forwarders in Buffalo, New York, should be shown on the entry or release documents in accordance with § 142.3(a)(6), since theirs are the premises in the U.S. to which the merchandise is to be delivered before being forwarded to England.

Example 15. Top Hat, Ltd., ships twenty orders of clothing accessories on individual bills of lading to various consignees. The entire shipment is included on a master bill of lading designating a customs broker as consignee.

One entry would be filed in this situation in accordance with § 141.51, Customs Regulations (19 CFR 141.51). Although the broker listed as consignee on the master bill of lading may be the importer of record, tariff-line items would designate the individual ultimate consignees. Ultimately, all twenty ultimate consignees would be listed on the entry. Some line items may be repeated for more than one ultimate consignee.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development

George J. Weise,

Commissioner of Customs.

Approved: March 29, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–8809 Filed 4–12–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use In Animal Feeds; Semduramicin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for making a semduramicin Type A medicated article used to make a Type C medicated broiler chicken feed for the prevention of coccidiosis.

EFFECTIVE DATE: April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas Letonja, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1656.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 140–940, which provides for making a 5.13 percent Aviax™ (semduramicin sodium) Type

A medicated article (equivalent to 50 gram (g) of semduramicin per kilogram or 22.7 g per pound (g/lb)) used to make a 25 parts per million semduramicin Type C medicated broiler chicken feed. The feed is used for the prevention of coccidiosis caused by *Eimeria tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix, and E. mivati/E. mitis* in broiler chickens.

The NADA is approved as of March 10, 1994, and the regulations are amended in part 558 (21 CFR part 558) by revising § 558.4(d) and adding new § 558.555 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Semduramicin is a Category I drug which, as provided in § 558.4 as amended, does not require a medicated feed application (form FDA 1900) for making a Type C medicated feed. The maximum concentration of semduramicin permitted in a Type B medicated feed is 2.25 g/lb (0.05 percent).

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act, this approval qualifies for 5 years marketing exclusivity beginning March 10, 1994, because no active ingredient (including any ester or salt thereof) has been approved in any other application under section 512(b)(1) of the act.

FDA has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Docket's Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.4 is amended in paragraph (d) in the "Category I" table by alphabetically adding a new entry for "Semduramicin" to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent[1] type A	Type B maximum (200x)	Assay limits percent[1] type B/C[2]
* * *	*	* *	*
Semduramicin	94–102	2.25 g/lb (0.50 %)	85–110.
* * *	*	* *	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibity of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

3. New § 558.555 is added to subpart B to read as follows:

§ 558.555 Semduramicin.

(a) *Approvals.* Type A medicated article containing 5.13 percent semduramicin sodium (equivalent to 50 grams semduramicin per kilogram or 22.7 grams per pound) to 000069 in § 510.600(c) of this chapter.

(b) *Conditions of use.* (1) Broilers:

(i) *Amount.* Semduramicin: 25 parts per million.

(ii) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix, and E. mivati/E. mitis.*

(iii) *Limitations.* Do not feed to laying hens. Reduced average daily gains may result from exceeding the levels of semduramicin recommended in the feeding directions.

(2) [Reserved]

Dated: April 6, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–8821 Filed 4–12–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8417]

RIN 1545–AQ53

Limitation on Passive Activity Losses and Credits—Technical Amendments to Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction.

SUMMARY: This document contains a correction to the correcting amendment published in the **Federal Register** for Thursday, August 26, 1993 (58 FR 45059), relating to temporary regulations (TD 8417), published in the **Federal Register** for Friday, May 15, 1992 (57 FR 20747). The temporary regulations related to the limitation on passive activity losses and credits.

EFFECTIVE DATE: May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Donna J. Welch, (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The document that is the subject of this correction is the correcting amendment to TD 8417, which adopted as final regulations changes to the

regulations under section 469 of the Internal Revenue Code, as amended. The regulations also revised the temporary regulations to reflect where portions had been adopted as final.

Need for Correction

As published, the correcting amendment for TD 8417 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected as follows:

PART 1—INCOME TAXES

On page 45059, column 3, instructional paragraph 2 is corrected to read as follows:

"**Par. 2.** Section 1.469–1T(e)(5) is amended by removing the reference "§ 1.469–1(d)(2)(xii)" and adding the reference "§ 1.469–2(d)(2)(xii)" in its place."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–8771 Filed 4–12–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918 and 1926

RIN 1218–AB02

Hazard Communication

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

ACTION: Final rule; Temporary stay of effective date for wood products.

SUMMARY: OSHA is staying until August 11, 1994 the coverage of the Hazardous Communication Standard to wood and wood products which will be processed in a manner which will create wood dust or which are treated with hazardous chemicals. This will allow more time to prepare labels and MSDS's.

DATES: The stay is effective March 11, 1994 to August 11, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8151.

SUPPLEMENTARY INFORMATION: On February 9, 1994 (59 FR 6126), the Occupational Safety and Health Administration (OSHA) published amendments to the existing Hazard Communication Standard which requires employers to establish hazard communication programs that would transmit information to employees by means of labels, manufacturer's safety data sheets (MSDS) and training. The amendment contained minor changes and technical amendments which went into effect March 11, 1994.

One of those amendments made clear that wood products which were to be processed in a manner which would create wood dust or were treated with hazardous chemicals were covered by the standard. They would not be covered by the exemption for other wood and wood products in the Hazard Communication Standard.

Warning labels and MSDS were appropriate for wood processed to create wood dust or treated with hazardous chemicals because of the health hazards that respiration of excess levels of those substances would cause. However, wood and wood products which only present the hazard of flammability do not need to be labeled because that hazard is common knowledge. Paragraph (b)(6)(iv) was amended to incorporate this clarification.

As the Hazard Communication standard covers all industries covered by OSHA, that amendment was made in identical language to 29 CFR 1910.1200(b)(6)(iv) (General Industry), 1915.1200(b)(6)(iv) (Shipyards), 1917.28(b)(6)(iv) (Marine Terminals), 1918.90(b)(iv)(6) (Longshoring), and 1926.59(b)(6)(iv) (Construction). Agriculture was covered by cross reference to the General Industry standard.

On March 4, 1994 OSHA was sent a letter by the American Forest and Paper Association which requested that this change be made effective August 11, 1994 and not March 11, 1994 as specified in the notice. OSHA viewed this change as a clarification because it was consistent with an interpretation OSHA had followed for several years. However many of its members had disagreed with OSHA's interpretation and one ALJ decision supported those members' view. Consequently they had not been labeling or supplying MSDS's when they shipped wood and wood products. It would take many of their members and other effected employers substantially more than 30 days to develop appropriate labels and MSDS's.

OSHA concludes that this request is reasonable. Efforts by employers would be better spent in the next few months, from the perspective of worker health, developing and attaching protective labels and supplying MSDS rather than upon interpretive disputes.

Accordingly OSHA is staying from March 11, 1994 until August 11, 1994 the effective date of that part of Paragraph (b)(6)(iv) which excludes from the wood dust exemption, wood and wood products which have been treated with hazardous chemicals or which would be sawed or otherwise processed to create wood dust. This stay applies to all sectors covered by OSHA.

OSHA is adding a note following the regulatory text of the Hazard Communication standard in parts 1910, 1915, 1917, 1918 and 1926 to implement this stay. Agriculture is covered through the cross reference in 29 CFR 1928.21 to the General Industry standard.

All other amendments to the hazard communication standard became effective March 11, 1994 as stated in the final rule. Notice and comment is unnecessary pursuant to 5 U.S.C. 553 and paragraph 6(b) of the OSH Act because this stay is brief and will facilitate concentrating efforts to come into compliance.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Under the authority of section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), (40 U.S.C. 333), sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 8033) and 5 U.S.C. 553, the Occupational Safety and Health Administration hereby temporarily stays part of paragraph (b)(6)(iv) of the Hazard Communication standard and accordingly adds a Note to parts 1910, 1915, 1917, 1918 and 1926 of title 29 of the Code of Federal Regulations, as set forth below.

Signed at Washington, DC, this 7th day of April 1994.

Joseph A. Dear,

Assistant Secretary for Occupational Safety and Health.

OSHA is adding a Note to parts 1910, 1915, 1917, 1918, and 1926 of title 29 of the Code of Federal Regulations as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

PART 1917—MARINE TERMINALS

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657: Secretary of Labor's Order 12–71 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR Part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2 and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)):

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z–1, Z–2 and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under Sec. 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1025 also issued under 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. The Authority citation for part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8745), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

3. The Authority citation for part 1917 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

4. The Authority citation for part 1918 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

5. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

§§ 1910.200, 1915.1200, 1917.28, 1918.90, 1926.59 [Amended]

6. Parts 1910, 1915, 1917, 1918 and 1926 are amended to reflect the stay granted by adding to the identical text of §§ 1910.1200, 1915.1200, 1917.28 1918.90 and 1926.59 a Note with identical text to follow paragraph (j) of each of those sections and to precede Appendix A of each of those sections to read as follows:

Section _____ Hazard communication

* * * * *

(j) * * *

Note: The effective date of the clarification that the exemption of wood and wood products from the Hazard Communication standard in paragraph (b)(6)(iv) only applies to wood and wood products including lumber which will not be processed, where the manufacturer or importer can establish that the only hazard they pose to employees is the potential for flammability or combustibility, and that the exemption does not apply to wood or wood products which have been treated with a hazardous chemical covered by this standard, and wood which may be subsequently sawed or cut generating dust has been stayed from March 11, 1994 to August 11, 1994.

* * * * *

[FR Doc. 94–8887 Filed 4–12–94; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Allowances for Extraordinary Gas Processing Costs

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of intent to retain extraordinary cost provisions.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) has regulatory provisions for gas processing cost allowances that exceed normal industry standards. The MMS had intended to develop criteria for the conditions and practices in the gas processing industry and for technologies that are unusual, extraordinary, or unconventional. However, after careful analysis of the comments received on the gas valuation regulations, as well as comments concerning whether extraordinary cost allowance provisions should be developed for its oil, coal, and geothermal product value regulations, MMS has decided to determine on a case-by-case basis whether an operation is outside of normal industry operational standards.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, MMS, Royalty Management Program, at (303) 231–3432.

SUPPLEMENTARY INFORMATION:

Background

(a) History of Regulation for Extraordinary Cost Allowances

The MMS gas valuation regulations at 30 CFR 206.158(d)(2)(i) (1993) state that MMS may grant an allowance for extraordinary costs of processing if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional. The MMS intended to apply this provision to advanced processing technologies or unusual conditions that are outside of normal industry operational standards.

The MMS published a Notice in the **Federal Register** on November 28, 1988 (53 FR 47829), entitled "Allowances for Extraordinary Costs, Transportation, and Gas Processing" and solicited comments on what factors would comprise criteria for standard practices and conditions and for assessing when a project would qualify for an extraordinary cost allowance. The comment period was originally due to close on January 27, 1989, but MMS, by **Federal Register** Notice dated January 25, 1989 (54 FR 3623), extended the due date for public comments to March 15, 1989.

(b) Summary of Comments

In response to the above referenced Notice, MMS received comments from the following entities:

- Industry,

- Industry trade groups or associations,
- State representatives,
- An Indian tribe,
- State/Indian associations,
- A royalty-interest group, and
- Members of Congress.

Many commenters did not provide the data or information requested by MMS necessary to define standard conditions and practices. Numerous industry, State, and State/Indian association commenters stated that the standard conditions and practices for the gas processing industry could not be defined since the technology is dynamic. They also stated that what constitutes extraordinary costs today may become standard in a few years and too many factors influence the economic and operating characteristics of a processing plant (for example, the location, size, age of a plant, gas stream composition, and environmental constraints).

One industry commenter commissioned a study on extraordinary gas processing costs and the underlying causes for such costs. The MMS could not compare the results of this study against other data since few commenters actually offered their definition of standard conditions for the gas processing industry. Although most industry commenters recommended criteria for determining whether a gas processing operation is extraordinary, many commenters believed that all projects should be granted allowances for extraordinary costs on a case-by-case basis rather than by a standard.

State and Indian respondents generally opposed allowances for extraordinary costs, and only a few commented on what standards would be used to classify a processing technology as extraordinary. Some State commenters reasoned that the extraordinary cost allowances should focus on high unanticipated costs above normal standards and not on low revenues generated by the plant.

For oil, coal, and geothermal production, State and Indian respondents unanimously opposed provisions for extraordinary cost allowances. Many industry commenters supported the extraordinary cost allowances for other minerals. However, the information provided was not relative for developing extraordinary-cost criteria.

Following the comment process, MMS evaluated all suggestions and submitted a summary to the Royalty Management Advisory Committee (RMAC) in June 1989 for its review and recommendations. On June 22, 1989, RMAC held a meeting with MMS in Denver, Colorado, to discuss issues and comments regarding extraordinary cost allowance provisions. The MMS presented its analysis to RMAC; however, RMAC took no action regarding this issue.

(c) Review of Applications Submitted to MMS

In addition to analyzing the comments received as a result of the Notices in the **Federal Register**, MMS reviewed the industry applications submitted in the past 6 years requesting extraordinary processing cost allowances. This review revealed that MMS has received nine requests for extraordinary cost allowances involving five gas processing plants. Most of the requests involved gas processing situations where processing costs were high due to the removal of hydrogen sulfide (H_2S). The MMS determined that gas with a high sulfur content (sour gas) is present throughout various locations around the continental United States as well as offshore. The H_2S from many of these areas is further refined to elemental sulfur and sold. The MMS concluded that production of sour gas is not extraordinary, unusual, or unconventional within the United States, either onshore or offshore.

(d) Approval Granted for Extraordinary Processing Allowances

Since the effective date of the gas valuation regulations (March 1, 1988), MMS has granted one extraordinary processing cost allowance for the LaBarge Project in Wyoming. As the Interior Board of Land Appeals (IBLA 86–626) observed, the LaBarge gas stream is atypical in a methane recovery project because only about 22 percent of the feed gas stream is methane and no liquefiable hydrocarbons are present. The MMS recognized the nature of gas from projects such as LaBarge and indicated in the preamble to the March 1, 1988, gas valuation regulations (53 FR 1240) that extraordinary cost allowances be granted for processing such atypical gas streams.

To contend with the unusual composition of the LaBarge Project feed gas stream, the plant design is complex when compared to typical methane recovery plants. Due to the atypical composition of the LaBarge Project feed gas stream and the complex nature of the plant, the cost to process the principal product, methane, is extraordinary compared with traditional methane recovery plants.

MMS Intent

After a review of the comments, as well as the requests for extraordinary cost allowances, MMS has decided to retain the current extraordinary cost provisions at 30 CFR 206.158(d)(2)(i) and not further define the criteria for assessing when a project qualifies for an extraordinary cost allowance. This decision will enable lessees to continue applying for an allowance on a case-by-case basis for advanced processing technologies.

Dated: April 6, 1994.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 94–8817 Filed 4–12–94; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 150

[CGD 93–080]

RIN 2115–AE69

Louisiana Offshore Oil Port: Expansion of Deepwater Port Safety Zone Boundaries

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is expanding the boundaries of the safety zone for the Louisiana Offshore Oil Port (LOOP). A deepwater port safety zone constitutes an area within which the erection of structures of mobile drilling operations for the exploration for or extraction of oil or gas is prohibited. Expanding the safety zone will enlarge the approach to the terminal portion of the safety zone and provide more unobstructed maneuvering room for vessels arriving and departing from LOOP. This will reduce the risk of a marine casualty and consequent pollution.

EFFECTIVE DATE: May 13, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the Office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan Burton, Office of Marine Environmental Protection (G–MEP), (202) 267–0426.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant

Commander Walter (Bud) Hunt, Project Manager, and Jacqueline Sullivan, Project Counsel, Oil Pollution Act (OPA 90) Staff, (G–MS–1).

Regulatory History

On February 17, 1994, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Louisiana Offshore Oil Port: Expansion of Deepwater Port Safety Zone Boundaries" in the **Federal Register** (59 FR 8096). The Coast Guard received eight letters commenting on the proposal. A public hearing was not requested, and one was not held.

Background and Purpose

The Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*) requires the Secretary of Transportation to designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety and to protect the marine environment. This responsibility was delegated to the Coast Guard in 49 CFR 1.46(s).

A deepwater port safety zone is designed to promote safety of life and property, marine environmental protection, and navigational safety at any deepwater port and adjacent waters. No installations, structures, or uses that are incompatible with port operations are permitted in a deepwater port safety zone. 33 CFR part 150 establishes the geographic boundaries of the safety zone for the Louisiana Offshore Oil Port (LOOP) in Annex A and provides for the modification of safety zone boundaries as experience is gained in deepwater port operations. The LOOP Safety Zone was first established on December 29, 1980 (45 FR 85644).

On January 16, 1984, LOOP submitted to the Coast Guard a request for a waiver of the requirements of 33 CFR 150.337(a), which prohibits a tanker from entering or departing a safety zone by other than a designated safety fairway. LOOP submitted to the Coast Guard chart 11359 and indicated two uncharted areas adjacent to the safety zone which they referred to as excursion zones. LOOP requested that vessels calling at the deepwater port be provided with additional maneuvering room by allowing use of these excursion zones when departing or entering the LOOP safety zone. Deviations from the safety fairway into these zones came to be known as "excursions." On February 20, 1987, the Coast Guard granted for 1 year a waiver of the requirements that tankers enter and leave the safety zone by the safety fairway. Since then, the Coast Guard has renewed the waiver on an annual basis.

On December 30, 1987, LOOP asked the Coast Guard to make the waiver permanent. On February 8, 1988, the Coast Guard denied the request on the grounds that future exploration for or extraction of oil or gas might occur within one or both excursion zones. If such activity took place, the Coast Guard might have to revoke the waiver for the sake of safety.

On January 21, 1992, the Coast Guard published a notice of petition for rulemaking and request for comments in the **Federal Register** announcing a request by LOOP that the Coast Guard expand the safety zone that surrounds the deepwater port (57 FR 2236). LOOP requested that the Coast Guard enlarge the safety zone by adding the two excursion zones and prohibit the erection of structures within the safety zone. This in effect makes permanent the annual waiver of the requirements of 33 CFR 150.337(a).

The expanded safety zone will include the present excursion zones, broaden the entrance to LOOP, and prohibit the erection of structures or mobile drilling operations. Enlarging the safety zone will reduce the number of required vessel maneuverings and eliminate structures from the zone, possibly reducing the risk of accidents and consequent pollution. This safety zone reflects actual tanker activity at LOOP based on detailed records the Coast Guard has required LOOP to maintain.

To resolve the potential for conflicting use between the expanded safety zone and oil and gas leases actually within the new zone, LOOP has agreed to compensate CONOCO, Inc., the lessee of Grand Isle Blocks 53, 58, 59, and 65. CONOCO, Inc. will then relinquish these blocks to MMS. LOOP will not seek further expansion of the safety zone or oppose any exploration and production activity outside or adjacent to the expanded safety zone.

On November 2, 1993, in a letter to the Department of Transportation, the MMS stated that it supports the agreement between LOOP and CONOCO, Inc. MMS stated that it is prepared to prohibit surface occupancy of offshore oil and gas facilities in the safety zone. However, MMS stated that it may be economically and technically feasible to develop the resources lying beneath the safety zone by directional drilling. MMS would not prohibit subseabed access provided that surface facilities are located outside the safety zone. Such subseabed activity would not interfere with vessel activity in the safety zone.

Under the Deepwater Port Act of 1974, as amended (33 U.S.C. 1509(d)(1)), the Secretary of Transportation is required to consult with the Secretary of State, the Secretary of Defense, the Secretary of the Interior, and the Secretary of Commerce prior to issuing the safety zone around any deepwater port for the purposes of navigational safety. The Coast Guard has informed the noted Departments of the safety zone expansion, and they have taken no exception to the safety zone as it appears in this final rule.

Discussion of Comments and Changes

The Coast Guard has received eight comments on the NPRM. Six comments endorsed the expansion of the safety zone or reversed previous comments which raised questions about the safety zone. One comment stated that LOOP should provide assurances that they will contain their activities to the limits of the safety zone and that LOOP should provide additional equipment and operational policies necessary to do so. The Coast Guard has determined that LOOP has taken sufficient measures to assure safe operation of the facility.

The National Oceanic and Atmospheric Administration identified four miles of submerged pipelines in the expanded safety zone. These pipelines have been located in this area at least since 1987 when the excursion zone was first put into effect. The Coast Guard concludes that the expanded safety zone will not increase the opportunity for disturbance of submerged pipelines in the safety zone.

The Coast Guard has not revised the final rule based on comments received on the NPRM.

Regulatory Assessment

This rulemaking is not a significant regulatory action under section 3(F)(1) of Executive Order 12866 (58 FR 51735; October 4, 1993), and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not a significant regulation under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The economic consequences of this rulemaking are minimal. Economic effects include impacts on mineral extraction and the commercial fishing industry. The expansion is relatively insignificant, comprising an approximate 15 percent increase in the size of the safety zone.

When the original safety zone was established, it was not expected that there would be significant interference with mineral extraction or navigation.

Due to the relatively small size of the expansion, no impacts on mineral extraction or navigation are expected in this case either. Access is available via alternative methods such as directional drilling.

This rulemaking will have minimal economic consequences for commercial vessels, including commercial fishing vessels. Commercial fishing vessels will continue to have restricted use of portions of the safety zone as provided in 33 CFR Table 150.345(a). Therefore, due to the small additional area involved, the impact on fishing activities is negligible. No opposition to the NPRM was received from the commercial fishing industry. The Coast Guard did not receive any comments on the economic consequences of this rulemaking.

In addition, this rulemaking provides permanent safety benefits. Providing additional maneuvering area minimizes the likelihood of a catastrophic pollution incident resulting from a vessel colliding with any portion of the LOOP facility. Therefore, the Coast Guard expects that expansion of the safety zone will reduce the environmental hazard.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this safety zone will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small business concerns under section 3 of the Small Business Act (15 U.S.C. 632). The small entities affected by this rule are commercial fishing activities at the deepwater port. The Coast Guard did not receive any comments on the impact of this rulemaking on small entities. The impact will be minimal. Therefore, 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 economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. LOOP is located beyond State waters where only Federal jurisdiction applies.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2(c) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule will not result in significant impact on the quality of the human environment, as defined by the National Environmental Policy Act. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 150 as follows:

PART 150—OPERATIONS

1. The authority citation for part 150 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2), 1509; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Appendix A to Part 150—Deepwater Port Safety Zone Boundaries

2. Appendix A to part 150, Annex A, is amended by revising section (a) to read as follows:

* * * * *

ANNEX A.—LOOP, INC. DEEPWATER PORT, GULF OF MEXICO

[(a) Deepwater Port Safety Zone]

Latitude N.	Longitude W.
(1) Starting at:	
28°55'23"	90°00'37"
(2) A rhumb line to	
28°53'50"	90°04'07"
(3) Then an arc with a 4,465 meter (4,883 yard) radius centered at the port pumping platform complex (PPC),	
28°53'06"	90°01'30"
(4) to a point	
28°51'07"	90°03'06"
(5) Then a rhumb line to	
28°50'09"	90°02'24"
(6) Then a rhumb line to	
28°49'05"	89°55'54"
(7) Then a rhumb line to	
28°48'36"	89°55'00"

ANNEX A.—LOOP, INC. DEEPWATER PORT, GULF OF MEXICO—Continued

[(a) Deepwater Port Safety Zone]

Latitude N.	Longitude W.
(8) Then a rhumb line to	
28°52'04"	89°52'42"
(9) Then a rhumb line to	
28°53'10"	89°53'42"
(10) Then a rhumb line to	
28°54'52"	89°57'00"
(11) Then a rhumb line to	
28°54'52"	89°59'36"
(12) Then an arc with a 4,465 meter (4,883 yard) radius centered again at the port PPC,	
(13) To the point of starting,	
28°55'23"	90°00'37"

Dated: April 6, 1994.

* * * * *

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–8837 Filed 4–12–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Louisville 94–005]

RIN 2115–AA97

Safety Zone; Ohio River Mile 468.5 to 473.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River. The regulation is needed to control vessel traffic in the regulated area while transiting downbound at night during high water conditions. The regulation will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATE: This regulation is effective on April 1, 1994, at 6 p.m. EST. It will terminate at 6 p.m. EST on April 15, 1994, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT:

LT Phillip Ison, Operations Officer, Captain of the Port, Louisville, Kentucky at (502) 582–5194.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafter of this regulation is LT Phillip Ison, Project Officer, Marine Safety Office, Louisville, Kentucky.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. In effect, this regulation extends an existing safety zone which will terminate at 6 p.m. EST on April 1, 1994. Although this regulation continues restrictions which have been in place for twenty-one days, following normal rulemaking procedures would have been impracticable. Specifically, the high water periods in the Cincinnati, Ohio area are natural events which cannot be predicted with any reasonable accuracy. The need to extend the restrictions, and how long they should be kept in place, could not have been predicted until recently, making it more practical to issue a new regulation instead of extending the current one. As the river conditions present an immediate hazard to navigation, life, and property, the Coast Guard deems it to be in the public's best interest to issue a regulation now.

Background and Purpose

The situation requiring this regulation is high water in the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best of conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet, on the Cincinnati gage, river currents increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. The regulation is intended to protect the public and the environment, at night during periods of high water, from a potential hazard of large downbound tows carrying hazardous material through the regulated area.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect the public and the environment.

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continue to read as follows:

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

2. A temporary § 165.T02–018 is added, to read as follows:

§ 165.T02–018 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 468.5 and mile 473.0 is established as a safety zone.

(b) *Effective Dates.* This section becomes effective on April 1, 1994, at 6 p.m. EST. It will terminate at 6 p.m. EST on April 15, 1994, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

(c) *Regulations.* In accordance with the general regulations under § 165.23 of this part, entry into the described zone by all downbound vessels towing cargoes regulated by title 46 Code of Federal Regulations subchapters D and O with a tow length exceeding 600 feet excluding the tow boat is prohibited from one-half hour before sunset to one-half hour after sunrise.

Dated: March 30, 1994.

W.J. Morani, Jr.,

Commander, U.S. Coast Guard, Captain of the Port, Louisville, Kentucky.

[FR Doc. 94–8835 Filed 4–12–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 75

Drug-Free Schools and Communities Act Regional Centers Program

AGENCY: Department of Education.

ACTION: Waiver of a rule.

SUMMARY: The Department waives the rule at 34 CFR 75.261 in order to extend the project period under the Drug-Free Schools and Communities Act (DFSCA) Regional Centers Program from 48 months to 60 months. This action will allow services under this program to continue uninterrupted, and will result in the awarding of 12-month continuation awards to each of the five existing grantees, using fiscal year (FY) 1994 funds.

EFFECTIVE DATE: April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly C. Light, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6439. Telephone: (202) 260–2647. 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 Regional Centers Program is authorized by sections 5111(a)(1) and 5135 of the DFSCA, which is part of the Elementary and Secondary Education Act (ESEA). Appropriations for the Regional Centers Program were authorized through September 30, 1993 by the DFSCA. Section 414 of the General Education Provisions Act (GEPA) authorizes an automatic extension of the DFSCA through FY 1994 (September 30, 1994). The Congress is considering reauthorization of the DFSCA, but final action on the reauthorization is not expected until late in FY 1994.

In FY 1990, the Department awarded cooperative agreements for five Regional Centers to provide training and technical assistance services in drug education and prevention to State educational agencies, local educational agencies, and institutions of higher education. The centers were each given a project period of 48 months, based on the project period announced in the Friday, September 15, 1989 **Federal**

Register. Since FY 1990, these centers have been maintained through continuation awards in three subsequent fiscal years (FY 1991, FY 1992, and FY 1993). Each center has received approximately $3 million per year.

Based on the automatic extension authorized under section 414 of GEPA, projects authorized under sections 5111(a)(1) and 5135 of the DFSCA can be funded in FY 1994 as well. Any funding after FY 1994 would be dependent on future Congressional action with no guarantee that projects funded under the current authorization could be supported.

If a new competition under the existing legislation were held in FY 1994, the projects could only be funded for a limited project period of 12 months. In the past, it has taken new centers up to a year to "start up," given the scope and complexity of the services they provide and the time it takes to hire qualified staff and develop plans and relationships that are responsive to clients in their regions. The Assistant Secretary believes that starting new centers in FY 1994 for only 12 months would severely disrupt the quality and level of center services. Holding a competition in FY 1994 would impose considerable costs at the Federal level without a guarantee that the new centers would be able to provide the technical assistance necessary to school districts, as the Department moves to implement Goals 2000 and the new ESEA.

Therefore, the Assistant Secretary, in the best interests of the Federal Government, extends the current projects for one additional year with the Federal Government bearing the cost. This action is consistent with the President's mandate to implement cost-effective, cost-saving initiatives. In order to make these cost extensions, the Assistant Secretary waives the rule at 34 CFR 75.261, which permits extensions of projects only at no cost to the Federal Government. In consideration of the foregoing, the Assistant Secretary waives 34 CFR 75.261 as applied to the DFSCA Regional Centers Program during FY 1994.

On January 18, 1994 the Assistant Secretary published a notice proposing this waiver in the **Federal Register** (59 FR 2549).

Public Comment

In the notice, the Assistant Secretary invited comments on the proposed waiver. Seven parties submitted comments and all supported the proposal to waive the rule and extend the current project period for one additional year. The Assistant Secretary has made no changes in the waiver since publication of the proposed notice.

Paperwork Reduction Act of 1980

This waiver has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice proposing this waiver, the Assistant Secretary requested comments on whether the proposed waiver would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based upon the response to the proposed waiver and on its own review, the Department has determined that this waiver does not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Education Department, Grant programs—education, Grant administration, Incorporation by reference.

(Catalog of Federal Domestic Assistance Number 84.188A Regional Centers Program)

Dated: April 7, 1994.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 94–8888 Filed 4–12–94; 8:45 am]

BILLING CODE 4000–01–P

POSTAL SERVICE

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 and Barcoded Rate Mailings; Correction

AGENCY: Postal Service.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published March 14, 1994 (59 FR 11886). The regulations related to requirements for the preparation of the residual portion of letter-size automation rate mailings.

EFFECTIVE DATE: The correction is effective June 12, 1994. The effective date of the final rule published on March 14, 1994 (59 FR 11886), is delayed to June 12, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Martin, (202) 268–5176.

SUPPLEMENTARY INFORMATION: On March 14, 1994, the Postal Service published a final rule (59 FR 11886–11896) that revised, effective May 8, 1994, the standards for preparing the residual portion of second- and third-class letter-size automation rate mailings. This rule also eliminated an existing option for preparing the residual portion of First-Class letter-size automation rate mailings and replaced it with the new options that will be required for second- and third-class letter-size automation rate mailings. This rule also made tray labeling changes for the qualifying portion of letter-size automation rate mailings to accommodate one of the new residual preparation methods. It contained a notice under Supplementary Information that a tray label change was made to AADC trays prepared under DMM M815 to make them consistent with other trays; however that actual rule change was inadvertently omitted.

Since publishing this final rule, the Postal Service has received comments that the May 8 effective date did not allow adequate time for the process of developing presort software changes, testing and correcting them, distributing them to users, and allowing users time to install and test them. Other commenters have requested that they be able to use the software as soon as they have it ready even if this is before the mandatory compliance date. Accordingly, to accommodate software vendors and mailers that need additional time to implement these new requirements properly, the Postal Service is changing the effective date of the final rule to June 12, 1994. Those mailers who wish to begin preparing mailings in accordance with the provisions of the final rule before such preparation becomes required on June 12, 1994, may do so, at their option, as soon as they are able.

Since publishing the March 14, 1994, final rule, the Postal Service also received a comment that although the supplementary information indicated under Labeling Changes that "The

AADC tray label for two-tier package-based preparation under DMM M815 is revised to change the position of the term LTRS on the second line so that it is consistent with other tray labels," this change was not set forth in the rule changes. Accordingly, the appropriate change to DMM M815 is set forth in this rule.

In view of the considerations discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 522(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

Module M: Mail Preparation

2. Make the following changes to Domestic Mail Manual (DMM) Module M.

* * * * *

M815 Barcoded—Two-Tier Package-Based Mailings

* * * * *

3.0 Tray Preparation—Qualifying Mail

* * * * *

3.4 Line 2

* * * * *

c. On AADC trays: LTRS AADC BARCODED.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–8848 Filed 4–12–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 16

[FRL–4860–9]

Privacy Act of 1974; Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to subsection (k) of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(k), EPA hereby amends its regulations at 40 CFR part 16 to exempt a system of records from compliance with certain subsections of the Act. The EPA–30 system of records, which was previously published in the **Federal Register** on August 12, 1992 (57 FR 36092), is called "OIG Hotline Allegation System—EPA/OIG" and is maintained by the EPA Office of Inspector General (OIG). This amendment is made to maintain the efficiency and integrity of OIG investigations, audits, or referrals that result from complaints concerning the possible existence of activities constituting a violation of law, rules, or regulations, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety.

EPA published the proposed rule in the **Federal Register** on November 22, 1993 (58 FR 61638) for a 30-day comment period. No comments were received from the public. This final rule is identical to the proposed rule.

EFFECTIVE DATE: April 13, 1994.

FOR FURTHER INFORMATION CONTACT: John C. Jones, Assistant Inspector General for Management, Office of Inspector General (2441), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 260–4912.

SUPPLEMENTARY INFORMATION: On July 2, 1986, EPA's final rule exempting several systems of records from compliance with certain subsections of the Privacy Act of 1974, as amended, was published in the **Federal Register** (51 FR 24145). EPA claimed a specific exemption for four systems of records under the authority of 5 U.S.C. 552a(k)(2). The exempted systems of records are identified at 51 FR 24146 and 24148 and are codified at 40 CFR 16.14(a)(1).

EPA is adding a system of records to those systems of records for which a specific exemption under 5 U.S.C. 552a(k)(2) has already been claimed. The EPA–30 system of records is called "OIG Hotline Allegation System—EPA/OIG." A notice describing that system of records was published in the **Federal Register** on August 12, 1992 (57 FR 36092).

Under the Inspector General Act of 1978, as amended, 5 U.S.C. app., EPA's Inspector General has the duty to recommend policies for and to conduct, supervise, and coordinate activities in EPA and between EPA and other Federal, State, and local governmental agencies with respect to: (1) The prevention and detection of fraud in programs and operations administered or financed by EPA, and (2) the identification and prosecution of participants in such fraud. In addition, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General.

The OIG Hotline Allegation System, which is operated and maintained by the OIG, Office of Management, Program Management Division, contains complaints and allegations received from employees of EPA, employees of other Federal agencies, employees of State and local agencies, and private citizens concerning the possible existence of fraud relating to Agency programs and operations. The system has been created in major part to support the criminal law enforcement activities assigned by the Inspector General to the Assistant Inspector General for Investigations.

In addition to its principal function pertaining to the enforcement of criminal laws, the OIG Hotline Allegation System contains complaints and allegations received from various sources concerning the possible existence of activities constituting a noncriminal violation of law, rules, or regulations, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety. Such complaints and allegations are referred to investigators or auditors in the OIG, to other components of EPA, or to other Federal, State, or local governmental agencies, as appropriate.

Under 5 U.S.C. 552a(k)(2), the head of any agency may promulgate rules to exempt a system of records from certain subsections of the Privacy Act of 1974, as amended, if the system of records contains investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2), subject to certain restrictions.

Accordingly, EPA is promulgating this rule to exempt the EPA–30 system of records to the extent that the system of records contains investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2), from the following subsections of the Privacy Act of 1974, as amended, as permitted by 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

Reasons for exemptions: EPA is exempting this system of records from the above requirements of the Privacy Act of 1974, as amended, to accomplish the law enforcement functions of the

OIG (*e.g.*, to prevent subjects of investigations from frustrating the investigatory process by discovering the scope and progress of an investigation; to prevent the disclosure of investigative techniques; to fulfill commitments made to protect confidentiality of sources; to maintain access to sources of information; and to avoid endangering these sources and law enforcement personnel). Additional reasons for exempting this system of records are set forth in EPA's final rule pertaining to Privacy Act exemptions published in the **Federal Register** of July 2, 1986 (51 FR 24145).

EPA is making this final rule effective upon publication in the **Federal Register** to ensure that sensitive information in the EPA–30 system of records is immediately exempt from disclosure so that the OIG can accomplish the law enforcement functions described above. In accordance with 5 U.S.C. 553(d)(3), EPA believes this reason constitutes the required "good cause" to make the rule effective immediately.

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 Office of Management and Budget (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.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866. OMB received a copy of the proposed rule during the public comment period and provided no comments to EPA.

Paperwork Reduction Act

This rule does not constitute an information collection request within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Therefore, this rule is not subject to the requirements of the Paperwork Reduction Act of 1980.

Regulatory Flexibility Act

Section 604(a) of the Regulatory Flexibility Act, 5 U.S.C. 604(a), requires EPA to prepare a final regulatory flexibility analysis in connection with any rulemaking for which EPA must publish a general notice of proposed rulemaking. The required regulatory flexibility analysis must contain a statement of the need for the rule, a summary of the issues raised by public comments, and a description of alternatives considered.

Section 605(b) of the Act, however, provides that section 604 of the Act "shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule, which exempts the OIG Hotline Allegation System from certain subsections of the Privacy Act of 1974, as amended, will have no economic impact on any businesses, large or small.

List of Subjects in 40 CFR Part 16

Environmental protection, Privacy.

Dated: April 1, 1994.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 16 is amended as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 16.14 is amended by revising paragraph (a)(1) to read as follows:

§ 16.14 Specific exemptions.

(a) *Exemptions under 5 U.S.C. 552a(k)(2).*—(1) *Systems of records affected.*

EPA–2 General Personnel Records—EPA.
EPA–4 OIG Criminal Investigative Index and Files—EPA/OIG.
EPA–5 OIG Personnel Security Files—EPA/OIG.
EPA–17 NEIC Criminal Investigative Index and Files—EPA/NEIC/OCI.
EPA–30 OIG Hotline Allegation System—EPA/OIG.

* * * * *

[FR Doc. 94–8867 Filed 4–12–94; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300300A; FRL–4740–6]

RIN No. 2070–AB78

Pentachloronitrobenzene; Revocation of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the interim tolerance for residues of the fungicide pentachloronitrobenzene (PCNB) in or on bananas (40 CFR 180.319). EPA is taking this action because there is no registered use for PCNB on bananas, and this use is not being supported for reregistration.

EFFECTIVE DATE: This regulation becomes effective on April 13, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP–300300A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Utterback, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32K5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone: 703–308–8026.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 22, 1993 (58 FR 49264), EPA issued a proposal to

revoke the interim tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the fungicide pentachloronitrobenzene in or on bananas as listed in 40 CFR 180.319.

EPA established an interim tolerance for PCNB for use on bananas pending the establishment of a permanent tolerance. However, EPA cannot establish a permanent tolerance for various reasons and as a result is revoking the interim tolerance in 40 CFR 180.319 for residues of pentachloronitrobenzene in bananas. The establishment of a tolerance under section 408 of FFDCA requires a finding that the tolerance will protect the public health. EPA does not have adequate data to make such a finding, and does not expect to receive such data because the use of PCNB on bananas is not being supported for reregistration. Further, there is no registered use of PCNB on bananas, and there is no evidence that it has been registered for this use in the U.S. for many years. A tolerance is generally not necessary for a pesticide which is not registered for the particular food use.

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

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the revocation of the interim tolerance for bananas in 40 CFR 180.319 is appropriate and that it will protect the public health. Therefore, the revocation is established as set forth below.

Any person adversely affected by this regulation revoking the interim tolerance may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order, i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

List of Subjects in 40 CFR Part 180

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

Dated: April 1, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.319 [Amended]

2. Section 180.319 *Interim tolerances* is amended in the table therein by amending the entry "Pentachloronitrobenzene" by removing from the list of raw agricultual commodities the entry "Bananas,".

[FR Doc. 94–8731 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 5F3251/R2048; FRL–4767–6]

RIN 2070–AB78

Pesticide Tolerance for Aluminum Tris (O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in or on dried hops at 45 parts per million (ppm). This regulation to establish the maximum permissible level of residue of the fungicide in or on the commodity was requested in a petition submitted by Rhone-Poulenc Ag Co.

EFFECTIVE DATE: This regulation becomes effective April 13, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5F3251/R2048], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–5540.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 9, 1994 (59

FR 5972), EPA issued a proposed rule that pursuant to petitions by Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, EPA proposed to establish under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a and 348) a tolerance for residues of the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in or on dried hops at 45 ppm.

One comment from the Embassy of the Federal Republic of Germany was received in response to the proposed rule to establish a tolerance of 45 ppm for fosetyl-Al in dried hops. The German Embassy strongly supports the reclassification of dried hops as a raw agricultural commodity. They also support establishing a tolerance for fosetyl-Al in dried hops at 45 ppm. However, the Embassy states that a maximum tolerance of 100 ppm in dried hops is appropriate based on residue data available from the United Kingdom, Belgium, France, and Germany. The commenter also stated, however, that support for a higher tolerance should not delay issuance of the 45-ppm tolerance as proposed.

No Codex, Canadian, or Mexican tolerances have been established for fosetyl-Al in dried hops. The 45-ppm level is based on residue studies submitted by Rhone-Poulenc Ag Co. that were conducted in the United States and represent U.S. hop-growing practices and U.S. techniques for control of plant diseases. EPA will establish the maximum tolerance for fosetyl-Al residues at 45 ppm based on this U.S. data. However, any interested party, including the German Embassy, may petition the Agency to increase this tolerance. After review of supporting data, if the tolerance protects the public health, EPA would establish the higher tolerance, if appropriate.

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

The data submitted relevant to the proposal and other related material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: April 1, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.415, by amending paragraph (a) in the table therein by alphabetically inserting the raw agricultural commodity dried hops, to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Hops, dried	45
* * * * *	

* * * * *

[FR Doc. 94-8876 Filed 4-12-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 721

[OPPTS-50583G; FRL-4746-2]

Phosphorylated Oxoheteromonocycle Polyoxyethylene Alkyl Ether; Phosphorylated Caprolactone, Alkyl Oxoheteromonocycle and Polyalkylene Polyol Alkyl Ether; Revocation of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for phosphorylated oxoheteromonocycle polyoxyethylene alkyl ether and phosphorylated caprolactone, alkyl

oxoheteromonocycle and polyalkene polyol alkyl ether, based on receipt of new data. The data indicate that the substances will not present an unreasonable risk to health.

EFFECTIVE DATE: The effective date of this rule is May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1990 (55 FR 32406), EPA issued two SNURs establishing significant new uses for phosphorylated oxoheteromonocycle polyoxyethylene alkyl ether (P–89–836) and phosphorylated caprolactone, alkyl oxoheteromonocycle and polyalkylene polyol alkyl ether (P–89–837). Because of additional data EPA has received for these substances, EPA is revoking the SNUR.

I. Background

The Agency proposed the revocation of the SNUR for these substances in the **Federal Register** of September 29, 1993 (58 FR 50895). The background and reasons for the revocation of the SNURs are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking the SNUR.

II. Background and Rationale for Revocation of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substances, and EPA identified the tests considered necessary to evaluate the risks of the substances. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substances and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substances. EPA concluded that, for the purposes of TSCA section 5, the substances will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substances designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process these substances. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The record for the rules which EPA is revoking was established at OPPTS–50583 (P–89–836 and P–89–837). This record includes information considered by the Agency in developing these rules and includes the test data that formed the basis for this revocation.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 7, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2000 [Removed]

2. By removing § 721.2000.

§ 721.3540 [Removed]

3. By removing § 721.3540.

[FR Doc. 94–8878 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50592G; FRL–4746–1]

Hydrogenated Arylated Polydecene; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for hydrogenated arylated polydecene based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to health.

EFFECTIVE DATE: The effective date of this rule is May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 1991 (56 FR 40204), EPA issued a SNUR establishing significant new uses for hydrogenated arylated polydecene (P–90–1454). Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of September 22, 1993 (58 FR 49271). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

II. Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to make a reasoned evaluation of the risks posed by the substance to human health. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS–50592 (P–90–1454). This record includes information considered by the Agency in developing this rule and includes the test data that formed the basis for this rule.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 7, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

721.6480 [Removed]

2. By removing § 721.6480.

[FR Doc. 94–8879 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50592F; FRL–4745–9]

Benzenepropanoic Acid, 3-(2*H*-Benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, C(7-9)-Branched and Linear Alkyl Esters; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for benzenepropanoic acid, 3-(2*H*-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, C(7-9)-branched and linear alkyl esters based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to health.

EFFECTIVE DATE: The effective date of this rule is May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 1991 (56 FR 40204), EPA issued a SNUR establishing significant new uses for benzenepropanoic acid, 3-(2*H*-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4 -hydroxy-, C(7-9)-branched and linear alkyl esters (P–90–1635). Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of September 29, 1993 (58 FR 50896). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

II. Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS–50592 (P–90–1635). This record includes information considered by the Agency in developing this rule and includes the test data that formed the basis for this revocation.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 7, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

721.1600 [Removed]

2. By removing § 721.1600.

[FR Doc. 94–8881 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50582K; FRL–4746–3]

2,5-Dimercapto-1,3,4-Thiadiazole, Alkyl Polycarboxylate; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 2,5-dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to health.

EFFECTIVE DATE: The effective date of this rule is May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 15, 1990 (55 FR 33296), EPA issued a SNUR establishing significant new uses for 2,5-dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate (P–88–1460). Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of September 15, 1993 (58 FR 48346). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

II. Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50582 (P–88–1460). This record includes information considered by the Agency in developing this rule and includes the test data that form the basis for this rule.

IV. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of this rule. Any costs or burdens associated with this rule will be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 7, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2460 [Removed]

2. By removing § 721.2460.

[FR Doc. 94–8877 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 940254–4104; I.D. 012894A]

RIN 0648–AF95

Pacific Coast Groundfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to allocate annually the U.S. Pacific whiting harvest guideline or quota, in 1994 through 1996, between fishing vessels that either catch and process at sea or catch and deliver to at-sea processors, and fishing vessels that deliver to processors located on shore. In each of the 3 years, after 60 percent of the annual harvest guideline (or quota) for whiting is taken, further at-sea processing in the exclusive economic zone (EEZ) will be prohibited. The remaining 40 percent (104,000 metric tons (mt) in 1994) will be reserved initially for fishing vessels that deliver to shore-based processors. On or about August 15, any amount of the harvest guideline (including any part of the 40 percent initially held in reserve) that is determined by the Director, Northwest Region, NMFS, not to be needed by the shoreside sector during the remainder of the year will be made available to the at-sea processing sector. This action is intended to promote the goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by equitably sharing the harvest guideline between shore-based and at-

sea processors, by contributing to the economies of coastal communities by providing reasonable opportunity for shoreside processing of the whiting harvest guideline, and by promoting stability in the West Coast fishing industry by diverting effort from other fully utilized fisheries.

EFFECTIVE DATES: April 8, 1994 through December 31, 1996.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) can be obtained from the Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: NMFS issues this final rule to implement a recommendation from the Pacific Fishery Management Council (Council) for a 3-year framework to allocate the annual Pacific whiting harvest guideline or quota between the shoreside and at-sea industry sectors. The background, problem, and Council recommendation were fully described in the notice of proposed rulemaking for this action (58 FR 8896, February 24, 1994). Public comments were requested through March 21, 1994. Eleven letters were received and are addressed later in the preamble to this final rule. The comments resulted in no change to the regulatory text of the proposed rule.

In summary, the problems the Council identified and is seeking to solve are: Too much fishing and processing capacity and not enough fish, inequitable distribution of economic benefits among the competing sectors, and regulatory instability that has prevented the industry from making timely business decisions.

To resolve these problems, the Council identified the following priorities: (1) Ensure that the shore-based sector has reasonable opportunity to participate; (2) foster stability of the shore-based processing sector by providing replacement revenues for other faltering fisheries; (3) help stabilize faltering rural coastal economies by providing fishing, processing, and supporting industry revenues to replace income declines in other industries; (4) achieve maximum net benefit to the Nation by putting economic benefits directly into coastal communities and distributing income impacts/benefits along traditional geographic paths; (5) spread the fishery over time and area, reducing potential pulse fishery impacts on whiting, salmon, and rockfish stocks; (6) prevent effort shift to other species; (7) address management of the entire groundfish resource rather than piecemeal; (8) contribute to increased long-term product yield and employment opportunities by spreading harvest over a longer season; and (9) discourage additional capital investment in harvesting or processing facilities.

The Council convened an ad hoc industry subcommittee in July 1993 in Portland, Oregon, to develop an allocation option that would be acceptable to all sectors. The subcommittee included a representative from each major sector in the whiting industry: Catcher vessels delivering at-sea, shoreside, and "at-large"; shoreside processors; catcher/processors; and mothership processors. The ad hoc committee, after considering a number of alternatives, successfully negotiated a 3-year agreement that was acceptable to all participants, and subsequently was adopted by the Council and recommended to NMFS.

The Council recommended that the first 60 percent of the annual whiting harvest guideline be available to all vessels in open competition with the remaining 40 percent reserved initially for shore-based activities. The Council recommended that after 60 percent has been harvested, no further at-sea processing be allowed for the remainder of the year or until August 15, when an additional portion of the harvest guideline would be made available pursuant to a NMFS assessment of how much of the harvest guideline will be utilized by shore-based processors during the remainder of the year. Any surplus to shore-based needs would be made available to all permitted vessels on or as soon as practicable after August 15. The Council recommended that the allocation scheme remain in effect for 3 years, 1994–1996. Any Pacific whiting harvested or processed in state ocean waters (0–3 nautical miles offshore) will be counted toward the EEZ limits.

Additional Releases

In the preamble to the proposed rule, comments were requested regarding the advisability of a second release of whiting after August 15 if necessary to ensure full utilization of the resource. The only comments relevant to the release date preferred a single release on October 15 rather than August 15 (see comment 6 below). A single release has been preferred by the industry in the past because of the confusion and logistical difficulties associated with multiple openings. NMFS agrees with the industry in preferring a single release, but recognizes that making accurate projections of shore-based needs is difficult. If it becomes obvious, after August 15, that shore-based needs have been substantially over-estimated, NMFS may release whiting at a later date, but only after consultation with the Council and only to ensure full utilization of the resource. The regulatory text at § 663.23(b)(4)(ii), which authorizes the release of whiting as soon as practicable after August 15, has been revised to authorize additional reserve releases.

Comments and Responses

The comments in 11 letters received during the public comment period ending March 21, 1994, are summarized below. Three letters opposed all or part of the proposed rule, and eight supported it.

Comments Opposing the Proposed Rule

Comment 1: The allocation is not equitable—the benefits and burdens must be shared fairly. The shoreside reserve of 40 percent (104,000 mt in 1994) is too high, particularly since the shore-based industry has processed only about half this amount in its highest year. One commenter preferred a shoreside reserve of 35 percent. Another preferred allocations to be based on actual, demonstrated performance.

Response: The Council's recommendation is a negotiated compromise that enables two sectors with differing operating needs to co-exist. The Council's industry subcommittee agreed to the use of a percentage allocation that benefits each sector when the harvest guideline is high and burdens each sector when it is low. In the preamble to the proposed rule, NMFS agreed that the benefit of an increased harvest guideline, as occurs in 1994, should be equitably shared between the at-sea and shore-based sectors, particularly since it is not expected to result in increased capitalization of either sector. The relatively high harvest guideline in 1994 results in the shore-based reserve for that year being higher than previous catch levels. If the entire reserve is not needed by the shoreside sector, the surplus will be released, increasing the amount available for processing at sea.

The percentage level of the shoreside reserve was debated at great length within the industry subcommittee. A 35-percent level was considered, but was not supported by the subcommittee. NMFS believes the 40-percent level recommended by the Council is reasonable.

Comment 2: The proposed rule fails to consider that, in the past, shoreside performance has fallen short of its preseason processing estimates.

Response: This final rule sets the shore-based reserve at 40 percent, and is not dependent on an annual preseason processing estimate. Whiting surplus to shoreside needs will be made available for at-sea processing to assure that the resource is fully utilized. If the harvest guideline declines, the shoreside reserve may be more in line with past performance levels.

Comment 3: The statement in the preamble to the proposed rule that each sector has the capacity to take a substantial portion, if not all, of the harvest guideline is inconsistent with the statement in the preamble to the proposed rule that the shore-based sector will have the opportunity to take more than double its historical catch.

Response: The statements in the proposed rule preamble are not inconsistent. They acknowledge that the historical shoreside catch has not reached what is believed to be existing shoreside capacity. As explained in the response to comment 1, the 1994 shoreside reserve is higher than past performance in part due to the large increase in the whiting harvest guideline and the application of a fixed percentage to that harvest guideline.

Comment 4: The analysis accompanying the rule assumes that the at-sea fleet is not a participant in the fishery.

Response: NMFS disagrees. The EA/RIR contains substantial information regarding recent operations by the at-sea processing fleet. However, the level of participation by that fleet under the limited entry program, which was implemented on January 1, 1994, and under various allocation options, still is not known with certainty. The limited entry fishery established a window period and certain requirements that must be met for a vessel to receive an initial limited entry permit. Most, if not all, catcher/processors did not meet the qualifications. They are treated the same as other non-qualifying vessels that operated in the groundfish fishery after the window period. The number and types of vessels that would attempt to acquire limited entry permits were unknown at the time the analytical documents were prepared. However, reasonable assumptions were made and catcher/processor participation was considered.

Comment 5: The commenter disagreed with the statement that "the Council is concerned about the impacts on traditional fishermen and the rural coastal communities where they reside, focusing on those displaced by Americanization of joint venture fisheries."

Response: This statement in the proposed rule reflects the Council's position as it appears in the EA/RIR. NMFS acknowledges that Americanization of the whiting fishery, as contemplated under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provided additional employment in the domestic processing sector. It also resulted in displacement of those whiting catcher vessels that had delivered to foreign processing vessels but could not find alternative domestic markets.

Comment 6: Two commenters, one representing the majority of at-sea processing vessels, stated that any release of surplus shoreside reserve should not be made until October 15, after the end of the pollock "B" season in Alaska.

Response: NMFS has not changed the August 15 release date that was part of the negotiated agreement by the industry subcommittee and recommended by the Council. This date was selected because it provided an equal opportunity for participation by vessels in the at-sea processing fleet, particularly smaller catcher vessels delivering to motherships, to operate before weather deteriorates or whiting migrate north to Canadian waters. A later release could disproportionately benefit catcher/processors that are larger and more capable of fishing successfully in rough weather. With an August 15 release, both mothership and catcher/processor operations would have an opportunity to participate, but may have to choose between the pollock "B" season or the whiting fishery. With some vessels choosing to fish in Alaska, effort in the whiting fishery in August would be lower than in the spring, which, given the lower amount of whiting that may be available, would support an orderly fishery.

Comments Supporting the Proposed Rule: Eight letters from the shore-based fishing and processing sector were received in favor of the proposed rule. The letters supported the negotiated agreement that recognizes the differences in shore-based and at-sea operations, allows each sector to operate at its maximum efficiency levels, and provides increased stability to coastal communities and the fishing industry. A comment also was received from an organization representing at-sea processors that supported the 40-percent reserve for the shore-based sector. However, as summarized above, this organization did not agree with the release date or with some of the statements in the proposed rule.

Response: None required.

Clarification

This final rule also revises an incorrect cross-reference at § 663.7, which should read § 663.23(b)(4)(iv). This revision was stated correctly in the regulatory text of the proposed rule, but incorrectly in the preamble.

Classification

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

This final rule is published under the authority of the Magnuson Act, 16 U.S.C. 1801 *et seq.* The Assistant Administrator for Fisheries, NOAA (AA), has determined that it is necessary for management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The AA finds good cause under section 553(d)(3) of the Administrative Procedure Act to make this rule effective upon filing at the Office of the Federal Register. If this rule is not effective on April 15, 1994, the date that the at-sea processing fleet may begin operations, or shortly thereafter, preemption of the shoreside processing sector by the at-sea sector would be a real possibility. Therefore, delaying the effective date of this rule for 30 days is contrary to the public interest.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 8, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

§ 663.7 [Amended]

2. In § 663.7, paragraph (o), reference to "§ 663.23(b)(v)" is revised to read "§ 663.23(b)(4)(iv)".

3. In § 663.23, paragraph (b)(4) is added to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(4) *Pacific whiting—allocation.* The following provisions apply 1994 through 1996—

(i) *The shoreside reserve.* When 60 percent of the annual harvest guideline

for Pacific whiting has been or is projected to be taken, further at-sea processing of Pacific whiting will be prohibited pursuant to paragraph (b)(4)(iv) of this section. The remaining 40 percent of the harvest guideline is reserved for harvest by vessels delivering to shoreside processors.

(ii) *Release of the reserve.* That portion of the annual harvest guideline that the Regional Director determines will not be used by shoreside processors by the end of that fishing year shall be made available for harvest by all fishing vessels, regardless of where they deliver, on August 15 or as soon as practicable thereafter. NMFS may again release whiting at a later date if it becomes obvious, after August 15, that shore-based needs have been substantially over-estimated, but only after consultation with the Council and only to insure full utilization of the resource.

(iii) *Estimates.* Estimates of the amount of Pacific whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Director from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Assistant Administrator will announce in the **Federal Register** when 60 percent of the Pacific whiting harvest guideline has been, or is about to be, harvested, specifying a time after which further at-sea processing of Pacific whiting in the fishery management area is prohibited. The Assistant Administrator will announce in the **Federal Register** any release of the reserve. In order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken.

* * * * *

[FR Doc. 94–8923 Filed 4–8–94; 4:39 pm]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 71
Wednesday, April 13, 1994

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 708

End-Use Certificate System

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Agricultural Stabilization and Conservation Service (ASCS) of the Department of Agriculture gives notice that it is currently planning to issue a proposed rule to implement U.S. end-use certificates for commodities imported from any foreign country or instrumentality that requires end-use certificates. The proposed action is in accordance with section 321(f) of the North American Free Trade Agreement (NAFTA) Implementation Act (the Act) which requires such action be taken by the Secretary of Agriculture. The primary purpose of the U.S. end-use certificate requirement is to help ensure that foreign agricultural commodities are not used in U.S. Government-assisted export programs. ASCS requests comments and suggestions from the public on the alternatives and issues that need to be addressed in implementing such a proposal including, but not limited to, those issues mentioned in this notice. Supporting data for comments are requested.

DATES: Comments should be submitted on or before May 13, 1994 to be assured of consideration.

ADDRESSES: Comments should be sent to the Deputy Administrator, Commodity Operations, ASCS, P.O. Box 2415, Washington, DC 20013–2415. All written comments received in response to this advance notice will be available for public inspection in room 5755, South Building, 14th Street and Independence Avenue SW., Washington, DC between 8 a.m. and 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Chief, Inventory Management Branch, Commodity Operations Division, ASCS, P.O. Box 2415, Washington, DC 20013–2415; phone 202–720–6500.

SUPPLEMENTARY INFORMATION:

I. Background

Section 321(f) of the Act established an end-use certificate requirement for wheat and barley imported into the U.S. from any foreign country, such as Canada, or instrumentality that requires end-use certificates for imports that are products of the U.S. The primary purpose of the U.S. end-use certificate requirement is to help ensure that foreign produced agricultural commodities are not used in U.S. Government-assisted export programs. The Act is not specific regarding the type of end-use certificate system to be implemented or the information to be collected. The Secretary of Agriculture is directed to issue regulations regarding the information to be provided in end-use certificates. The information could include type of commodity, class, quantity, country of origin, importer of the commodity, and the end-use of the commodity, if known at the time of importation of the commodity.

As a means of protecting the interests of U.S. agricultural producers, the Act provides that the Secretary may, after consulting with domestic producers and reporting to the Congress, suspend end-use certificate requirements if the requirements have directly resulted in the reduction of:

(1) Income to U.S. producers of agricultural commodities, or

(2) Competitiveness of U.S. agricultural commodities in world export markets.

If a foreign country or instrumentality that requires end-use certificates eliminates its system, the Secretary is to suspend the U.S. end-use certificate requirement 30 calendar days after the suspension by the foreign country or instrumentality.

Further, the Act provides that it shall be a violation of 18 U.S.C. 1001 for a person to engage in fraud or knowingly violate Section 321(f) or applicable regulations.

As of this date, only Canada requires end-use certificates on U.S. grain entering the country.

Current statutes provide that only commodities produced in the U.S. may be considered eligible for use in U.S. Government-assisted export programs. These programs have proved to be an important vehicle for developing commercial export markets, meeting humanitarian food needs, and spurring economic and agricultural growth in developing countries. In essence, the programs help U.S. agricultural producers by developing and expanding export markets for their commodities and improving the competitiveness of those commodities in world markets. For example, in the case of wheat, approximately 80 percent of U.S. wheat exported in recent years was done so under at least one of USDA's export programs. Given that the U.S. is striving toward a free and fair environment for the trade of agricultural commodities in North America (e.g., through NAFTA and Uruguay Round of the General Agreement on Tariffs and Trade (GATT)), the Congress, recognizing the important role that U.S. Government-assisted export programs play in the U.S. economy, has approved legislation which endeavors to ensure the integrity of such programs.

The main question this notice poses is:

What type of end-use certificate system will best accomplish the objective of helping ensure that foreign agricultural commodities are not used in U.S. Government-assisted export programs while still maintaining compatibility with the grain merchandising system of the U.S.?

Are current handling and reporting requirements such that the gathering of additional information on the use of imported grain will be sufficient to meet U.S. origin requirements of Government-assisted export programs? Or are more stringent handling requirements necessary to ensure that imported grain will not be used in U.S. Government-assisted export programs? While one of several alternative systems could be implemented, all systems have advantages and disadvantages. Thus, consideration must be given to the effects such a system will have on U.S. producers, importers, warehouses, grain handlers, millers, processors, exporters,

feedlot operators, and ultimately, U.S. consumers.

II. U.S. Grain System vs. Canadian Grain System

Because Canada is the only country currently requiring end-use certificates, a comparison of the U.S. and Canadian marketing systems is helpful. The handling and distribution of grain in the U.S. is based on blending various grades and qualities from different locations to reach the quality attributes desired by the buyer. The Canadian grain handling and distribution system is quite different. That system preserves the origin and, in some cases, the variety of Canadian grain. Blending and commingling different lots of grain are not part of normal commercial practices in Canada.

III. Canadian End-Use System

The Canadian end-use system reflects their marketing system. The Government of Canada (GOC) requires that U.S. milling wheat and barley imported into Canada be accompanied by an end-use certificate. This is to ensure that non-Canadian grain does not become commingled with Canadian grain.

The GOC position is that it wants to protect Canada's strict varietal licensing system which has been designed to select what they view as superior quality grain varieties. In addition, mirroring U.S. concern, the GOC wants to avoid any concern that U.S. grain might take advantage of GOC domestic or export programs, such as the Western Grain Transportation Act.

When a U.S. grain exporter wants to ship grain to Canada, an end-user (the consignee) must be identified. The U.S. grain must be consigned directly to a milling, manufacturing, brewing, distilling, or other processing facility for consumption at that facility. Three months after the Canadian consignee receives the imported U.S. grain, the consignee is required to file quarterly reports until the imported grain has been fully consumed as a food or feed ingredient. After the grain has arrived at the location specified in the end-use certificate, it must be stored and handled separately and cannot be moved or used for any other purpose than that specified in the end-use certificate without the permission of the GOC.

Grain imported into Canada for direct feed-use must be "denatured" before it can be transported across the border. GOC regulations define "denatured" as any lot containing at least 10 percent permanently colored kernels.

IV. Alternatives for a U.S. End-Use System

What type of end-use certificate system will best accomplish the objective of helping ensure that foreign agricultural commodities are not used in U.S. Government-assisted export programs while still maintaining compatibility with the grain merchandising system of the U.S.?

Should a U.S. end-use system be patterned after the Canadian end-use system and, if so, in what way? Should a U.S. end-use system simply adopt the Canadian provisions? Or, in that the Canadian system reflects the Canadian marketing system, should the U.S. adopt an end-use system that also reflects the U.S. marketing system?

The key issue separating the following alternatives involves the issue of commingling vs. separate storage (i.e., identity preservation) of imported and U.S. origin grain. In brief, the proposed alternatives are as follow:

(1) Allow commingling of imported and U.S. grain. Require that a certificate which collects all relevant information be issued at the U.S. border on imported grain. Continue (or modify) current ASCS rules and policies that help ensure that foreign agricultural commodities are not used in U.S. Government-assisted programs.

(2) Allow commingling of imported and U.S. grain. Require that the commingled imported and U.S. grain be stored separately from U.S. origin grain until delivered to the end-user.

(3) Prohibit commingling of imported and U.S. grain. Require that imported grain be stored separately from U.S. origin grain until delivered to the end-user.

The following provides additional information on the proposed alternatives. Variations on these alternatives may also be considered.

(1) ASCS could implement a "border certificate" system in which, as the agricultural commodity crosses the U.S. border, the importer would complete a form identifying the various required information elements. Under this scenario, certificates would be issued and collected at the border. ASCS could compile data, publish reports, and perform compliance checks based on the information collected. This alternative would be the simplest of the alternatives to operate and administer. It would not impose any additional burden on the U.S. grain handling sector.

(2) ASCS could implement a system which tracks commingled grain. This scenario would allow foreign agricultural commodities to be blended and commingled with U.S. commodities under the requirement that all lots containing commingled U.S. and foreign agricultural commodities be tracked, with a complete paper-trail, throughout the entire U.S. commodity system. This alternative would permit the blending and commingling of U.S. and Canadian grain, but only under the condition that all lots containing even a trace amount of Canadian grain be identified and tracked through the grain system. For example, if one ton of Canadian wheat was imported and blended with 10 tons of U.S. wheat, that entire lot would have to be identified as commingled U.S.-Canadian wheat and tracked to the final user since that 11 tons of commingled U.S.-Canadian wheat would not be eligible for use in Government-assisted export programs. If the commingled lot were further blended with another 19 tons, and then split into two separate lots of 15 tons—the identifying paperwork would have to accompany both lots through the rest of the marketing chain. To make this alternative work, ASCS would have to be able to require that the identity of the commingled grain be preserved on all commercial sales documents, such as invoices and bills of lading, from the first point where the U.S. and Canadian grain is commingled through each subsequent sale, i.e., from the point of commingling through the remainder of the U.S. marketing chain to the processor, feedlot, brewer, distiller, or exporter.

(3) ASCS could implement an "identity preservation" system—an end-use certificate system that preserves the identity and origin of the commodity as it moves through each step of the marketing chain by requiring separate handling and storage. Only the end-user, such as a flour miller, would be allowed to commingle U.S. and imported commodities. Of course, if the flour were being purchased by the Commodity Credit Corporation (CCC) for use in a Government-assisted program, domestic origin requirements would prevail subjecting the miller to compliance reviews by ASCS. This alternative would give a high level of assurance that Canadian grain was not entering the U.S. Government-assisted programs and provide large amounts of information on quantity and quality of Canadian grain entering the U.S.

V. Current ASCS Rules and Policies

Any end-use certificate system should be designed to supplement or broaden the use of current ASCS rules and policies used to procure commodities for donation or sale under the Food for Progress, Pub. L. 480 Titles II and III,

and section 416(b) foreign food assistance programs, as well as for domestic food assistance programs. Under these programs, the physical commingling of U.S. origin grain with non-U.S. origin grain is allowed provided that at the time of delivery to CCC the grain merchant has a sufficient quantity and quality of U.S. origin grain available at the location where loading occurred to account for the grain sold to CCC. The grain merchant's accounting records and supporting documents must demonstrate such availability and reduction in the stocks of U.S. origin grain. ASCS monitors the compliance of CCC's contractors through the selection and review of a number of contracts each quarter. The domestic origin reviews are performed by the Kansas City Commodity Office, ASCS. It is the responsibility of the CCC contractor to adequately maintain documents to establish the origin of the commodity. Failure of CCC's contractors to establish or otherwise maintain adequate records which verify the U.S. origin of the commodity or product delivered to CCC may be cause for suspension or debarment from bidding on future CCC contracts.

VI. Compliance Costs

It is ASCS' intent that costs associated with verifying end-use certificate compliance will be borne by entities importing the grain. Such costs will likely be assessed at the time of issuance of each end-use certificate.

VII. Summary

Many variations of the aforementioned alternatives are possible. ASCS invites interested persons to submit written comments and supporting data with regard to the establishment of an end-use certificate system for the U.S. Comments are specifically invited on the following issues:

A. General Issue

What type of end-use certificate system will best accomplish the objective of helping ensure that foreign agricultural commodities are not used in U.S. Government-assisted export programs while still maintaining compatibility with the grain merchandising system of the U.S.?

B. Operational Issues

1. What information should be collected on an end-use certificate?

2. How can ASCS minimize paperwork and reporting requirements associated with end-use certificates?

3. How should ASCS enforce requirements under an end-use certificate system?

4. Should all imported grain be covered by certificates or should some types of grain—such as wheat and barley used for livestock feed—be exempted?

5. Should imported grain be stored separately from domestically-produced grain (i.e., identity preserved)?

C. Economic Impacts

(a) General

1. Will end-use certificates under the different alternatives significantly change U.S. import levels for wheat and barley, or will they mainly increase reporting, handling, and/or storage requirements?

2. What modifications, if any, of current procedures of the grain merchandising system will be required under the alternative end-use certificate systems, and what economic impacts—costs or benefits—will any such modifications have?

(b) Specific

1. What are the potential economic impacts—positive or negative—of imports and the alternative end-use certificate systems on costs, income, and employment of:

a. Local elevators;

b. Other local businesses and rural communities;

c. Importers, merchandisers, regional and other warehouses;

d. Millers, bakers, and processors;

e. Feedlots and the livestock sector;

f. U.S. grain and livestock producers; and

g. U.S. consumers?

2. What are the potential impacts—positive or negative—of imports and the alternative end-use certificate systems on U.S. Government programs and outlays?

3. What are the potential impacts on others, if any, not listed above?

Signed at Washington, DC on April 7, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 94–8801 Filed 4–12–94; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO–225–A45–R01; DA–92–10]

Milk in the Southern Michigan Marketing Area; Extension of Time for Filing Briefs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing briefs.

SUMMARY: This document extends the time for filing briefs on the record of the reopened hearing held March 1, 1994, in Grand Rapids, Michigan, concerning proposals to modify the recommended decision on multiple component pricing in the Southern Michigan marketing area. A party involved in the original hearing requested more time to review the hearing record and to prepare briefs.

DATES: Briefs are now due on or before April 23, 1994.

ADDRESSES: Briefs (4 copies) should be filed with the Hearing Clerk, room 1083, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued December 3, 1992; published December 10, 1992 (57 FR 58418).

Supplemental Notice of Hearing: Issued January 19, 1993; published January 29, 1993 (58 FR 6447).

Recommended Decision: Issued November 29, 1993; published December 6, 1993 (58 FR 64176).

Notice of Reopened Hearing: Issued February 18, 1994; published February 24, 1994 (59 FR 8874).

Notice is hereby given that the time for filing briefs and proposed findings and conclusions on the record of the reopened public hearing held March 1, 1994, in Grand Rapids, Michigan, with respect to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan Federal milk marketing area pursuant to the notice of reopened hearing issued February 18, 1994, and published February 24, 1994 (59 FR 8874), is hereby extended from April 1, 1994, to April 23, 1994.

This notice is issued pursuant to the provisions of the Agricultural Marketing

Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Authority: 7 U.S.C. 601–674.

Dated: April 6, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–8856 Filed 4–12–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1126

[DA–94–10]

Milk in the Texas Milk Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend the "dairy farmer for other markets" provisions of the Texas milk marketing order. The proposal would suspend a portion of the producer definition until such time as this and other pooling provisions of the order can be reviewed at a public hearing. The action was requested by Associated Milk Producers, Inc., a cooperative that represents dairy farmers whose milk is pooled under the order. Proponent contends that these provisions prevent the cooperative from marketing its milk supplies efficently.

DATES: Comments are due no later than April 20, 1994.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

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

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed 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 an 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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provisions (or sections) of the order regulating the handling of milk in the Texas marketing area is being considered until this and other pooling provisions of the Texas order are reviewed at a public hearing:

In § 1126.12, paragraph (b)(5) in its entirety.

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because this action needs to be completed at the earliest practicable date.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend the "dairy farmer for other markets" provisions of the Texas milk order (Order 126). By suspending these provisions, the milk of dairy farmers who were not associated with the Texas market in September-November could be used to supply Order 126 distributing plants during the following months of February-July.

In its letter requesting the suspension, Associated Milk Producers, Inc. (AMPI) stated that these provisions are now preventing the cooperative from marketing its milk supplies efficiently. Because of the limitation on which dairy farmers can be producers under the Texas order during the months of February-July, AMPI was unable to pool more than two million pounds of milk it supplied to an Order 126 distributing plant in Little Rock, Arkansas, during February 1994. The milk of these dairy farmers, who are more favorably located with respect to the Little Rock plant than are the cooperative's Texas producers, was not eligible for pool status because the dairy farmers had not been associated with the Texas market to the extent necessary during the preceding months of September-November. If AMPI supplies the Arkansas plant with milk of eligible Texas producers, the cooperative suffers an economic pooling loss because the Little Rock plant is subject to a minus 39-cent location adjustment, proponent states.

Proponent also claims that the market's supply/demand relationship has changed dramatically since these provisions were adopted. Because of these circumstances, AMPI asks that the "dairy farmer for other markets" provisions be suspended until the appropriateness of this and other pooling provisions for this market can be explored at a public hearing.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

The authority citation for 7 CFR part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: April 6, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–8858 Filed 4–12–94; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–60]

Virginia Power; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of petition for rulemaking dated December 30, 1993, which was filed with the Commission by Virginia Power. The petition was assigned Docket No. PRM–50–60 on January 19, 1994. The petitioner requests that the Commission amend its emergency preparedness requirements to change the frequency with which each licensee conducts independent reviews of its emergency preparedness program from annually to biennially.

DATES: Submit comments June 27, 1994. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Docketing and Service Branch, Washington, DC 20555. For a copy of the petition, write to the Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Commission's regulations currently require that each licensee conduct an independent audit of its emergency preparedness program by personnel who have no direct responsibility for the subject areas at least every 12 months.

Petitioner's Request

Virginia Power requests that the NRC amend its regulations to require that each licensee conduct, at a minimum, a biennial, rather than annual, independent audit of its emergency preparedness program. The petitioner states that, if warranted by performance, the resources previously dedicated to the conduct of mandatory audits in this area could now be more effectively used to address performance issues of safety significance. The petitioner indicates that audit functions concerning emergency preparedness would in turn become more performance-based rather than schedule-driven according to the present annual requirement.

The petitioner notes that this request is consistent with the recommendation of the NRC Regulatory Review Group Summary and Overview Report (August 31, 1993).

Grounds for Request

The petitioner states that the changes requested are identified as present requirements which are resource intensive but of marginal importance to safety. The petitioner offers the following reasons for the request.

1. The underlying purpose of the existing rule is to ensure the continued emergency preparedness program effectiveness in taking the required actions necessary to provide for the health and safety of the public in the event of plant emergencies. This can be readily attained by a more performance-based approach to emergency preparedness overview. The frequency of audits need not be set on an annual basis if performance warrants a different frequency. The proposed rule provides for a nominal frequency of 24 months based on existing performance.

2. Industry performance to date indicates excellent implementation and effective emergency preparedness programs. Industry-wide SALP ratings for emergency preparedness have improved from an average of 2.29 in 1980 to 1.26 in 1992. A two-year audit schedule would permit the licensee an increased degree of flexibility to concentrate available audit resources in areas of observed weakness based on performance rather than conducting a mandatory annual audit of marginal safety significance.

3. The existing requirement to conduct an annual audit is not of itself necessary to achieve the underlying purpose of 10 CFR 50.54(t). Performance-based overview with a two-year maximum interval is sufficient and the proposed rule does not preclude an increased audit frequency if performance warrants. Based on the existing performance within the industry, biennial audits represent an acceptable minimum frequency.

4. The proposed rulemaking is philosophically consistent with the recommendations concerning audits of programs such as Fitness for Duty included in the NRC Regulatory Review Group Summary and Overview (Final) issued in August 1993.

5. Regulatory Guide 1.33, Quality Assurance Program Requirements (Operation), prescribes a two-year audit frequency for most operational phase activities commensurate with the activity's operational safety significance. As emergency preparedness programs serve to ensure the proper operation of each facility, so the audits of these programs serve to monitor program effectiveness. The proposed rule is consistent with this previously defined regulatory position and the present safety significance as evidenced by industry performance.

6. Granting the proposed rule to reduce the frequency of audits based on continued good performance is warranted based on the present good performance of industry plans and programs, the documented trend of identifying fewer significant issues associated with emergency preparedness audits, and by virtue of meeting the intent of the regulations in the balance of their requirements.

7. Consideration of relaxing this requirement is warranted in light of the completion and implementation of enhanced emergency equipment and systems, the continuing rise in the level of industry proficiency and performance, and the increased industry sensitivity to emergency preparedness.

8. The existing requirements to conduct annual audits are not of themselves necessary to achieve the underlying purpose of Appendix E to 10 CFR part 50. Biennial audits are sufficient to provide an acceptable formal confirmation of program effectiveness.

Supporting Information

The petitioner states that emergency preparedness programs throughout the industry are designed to achieve and maintain an adequate level of emergency response capability and that required audits are conducted to ascertain the effective implementation of the basic elements existing within emergency preparedness plans and organizations. The petitioner states that the audit process is designed to ensure and confirm the ability to respond properly to an emergency condition. According to the petitioner, the intent of the petition for rulemaking would be to verify that an acceptable level of emergency preparedness is attained and maintained consistent with each approved program.

The petitioner states that in addition to the audits, onsite and offsite graded exercises also serve as a direct assessment of program effectiveness. The petitioner notes that this petition for rulemaking complements the petition for rulemaking published on March 4, 1993 (58 FR 12339), concerning modification of the requirement to change the exercise emergency plans from annual to biennial. The petitioner indicates that the audit and exercise can alternate yearly as the formal means to verify program effectiveness and that neither action precludes additional audits if

performance trends indicate additional overview is warranted.

The petitioner states that because audits indicate to management where additional attention and resources might be needed based on performance trends, excellent performance could also indicate where less attention and resources are required. Therefore, the petitioner believes that based on industry's performance, annual audits of emergency preparedness programs are no longer commensurate with any safety benefit derived by the audit function.

Proposed Amendments to 10 CFR Part 50

The petitioner proposed that in § 50.54, paragraph (t) be revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(t) A nuclear power reactor licensee shall provide for the development, revision, implementation, and maintenance of its emergency preparedness program. To this end, the licensee shall provide for a review of its emergency preparedness program nominally every 24 months by persons who have no direct responsibility for implementation of the emergency preparedness program. The review shall include an evaluation for adequacy of interfaces with State and local governments and of licensee drills, exercises, capabilities, and procedures. The results of the review, along with recommendations for improvements, shall be documented, reported to the licensee's corporate and plant management, and retained for a period of five years. The part of the review involving the evaluation for adequacy of interface with State and local governments shall be available to the appropriate State and local governments.

* * * * *

Conclusion

The petitioner states that the existing rule is not necessary to ensure an adequate emergency preparedness program. It provides an overview to direct management attention and resources to observed performance deficiencies. The petitioner indicates that the proposed rule would continue to require an adequate minimum provision for program overview based on existing industry performance. Therefore, the petitioner believes that annual audits are no longer commensurate with the benefit gained based on the commendable performance by the industry in this area.

Dated at Rockville, Maryland, this 7th day of April 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 94–8844 Filed 4–12–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 290

[Docket No. R–94–1709; FR–3549–P–01]

RIN 2502–AG18

Sale of HUD-Held Multifamily Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the basic policies and procedures that govern the disposition of HUD-held multifamily project mortgages.[1] In general, the Department will sell both current mortgages and delinquent mortgages. HUD will not sell delinquent mortgages, however, if foreclosure is unavoidable, and the project securing the mortgage is occupied by low-income tenants who are not receiving housing assistance but would do so under section 203 of the Housing and Community Development Amendments of 1978 if HUD foreclosed upon the mortgage. In addition, mortgages on subsidized properties will only be sold with Federal Housing Administration (FHA) mortgage insurance or equivalent tenant protections; mortgages for unsubsidized projects may be sold without FHA insurance.

DATES: Comments are due June 13, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Preservation and Property Disposition, Office of Housing, Room 6164, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3555. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Department of Housing and Urban Development's inventory of project mortgages is large and growing. The Office of Management and Budget acknowledged this development by designating multifamily property and loan disposition as a High Risk Area. To reduce losses to the FHA fund, to decrease its inventory of project mortgages, to improve the servicing of these mortgages, and to improve the rental services provided by properties securing its insured and HUD-held mortgages, HUD is proposing to resume the sale of multifamily project mortgages.

HUD's inventory of mortgages has grown significantly since mortgage sales stopped in FY 1985. As of August 1993, HUD held over 2,400 project mortgages in inventory. (In comparison, HUD's inventory of mortgages totaled 2300 at the end of FY 1991, 1600 at the end of FY 1989, and 1400 at the end of FY 1987.) In August of 1993, approximately 1,100 HUD-held multifamily residential mortgages with unpaid principal balances (UPBs) of $1.5 billion were current and 1,200 with UPBs of $5.6 billion were delinquent. Approximately 874 current mortgages (80 percent of current mortgages) and 310 delinquent mortgages (25 percent of delinquent mortgages) were subsidized. Current mortgages included nearly 400 mortgages assigned under Section 221(g)(4) of the National Housing Act that were current at the time of assignment. Delinquent mortgages included nearly 300 formerly coinsured mortgages. In addition, the HUD-held inventory included 44 nursing home mortgages with UPBs of about $170 million and 10 hospital mortgages with UPBs of about $110 million.

In the FY 1992 FHA Audit Report, HUD increased its loss reserves to $11.9 billion for its $43.6 billion of multifamily insurance in force. One of the aims of HUD's mortgage sales

[1] This rule, and the policies contained in this rule are intended to satisfy HUD's obligations under the settlement agreement in *Walker* v. *Kemp*, No. C 87 2628 (N.D. Cal.) with regard to the Exhibit B mortgages.

program is to reduce these projected losses by increasing the number of mortgages returned to current status and increasing returns to the Federal Government through mortgage sales.

B. General Policy

In general, the Department will only sell subsidized mortgages with FHA mortgage insurance or equivalent tenant protections. The Department may sell unsubsidized mortgages with or without mortgage insurance. In addition, the Department will sell both current mortgages and delinquent mortgages. The Department will not sell delinquent mortgages that it believes cannot be worked out if the projects securing the mortgages are occupied by low-income tenants who are not receiving rental assistance but who would be eligible to receive rental assistance under section 203 of the Housing and Community Development Amendments of 1978 (HCDA of 1978) if the mortgages were foreclosed upon by HUD. The Department will sell delinquent mortgages on such projects that it believes can be worked out. While the Department would not expect it to be needed, purchasers of such mortgages would retain the option of foreclosure because the ability to foreclose facilitates work-out activity.

In accordance with section 203(i)(2) of the HCDA of 1978, a subsidized mortgage is defined by this rule as a mortgage on a project which receives assistance under any of the following programs: (1) The section 221(d)(3) Below Market Interest Rate loan program; (2) the section 236 Interest Reduction Payment program, (3) a direct loan with below market interest rates made under section 202 of the Housing Act of 1959, section 401 and 404(b)(3) of the Housing Act of 1950, or section 312 of the Housing Act of 1964; (4) the section 101 Rent Supplement payments program; and (5) Housing assistance payments under section 23 of the U.S. Housing Act of 1937 in effect before January 1, 1975, or section 8 of the U.S. Housing Act of 1937. Housing assistance payments under the Section 8 Rental Certificate program (24 CFR part 882, subparts A, B, C and F), and the Section 8 Rental Voucher program (24 CFR part 887) are excluded in determining whether a project is a subsidized rental housing project.

Unsubsidized mortgages include mortgages on projects where rents are partially or wholly subject to market determination rather than regulation by HUD. Unsubsidized projects include those projects insured under: (a) Section 207, Multifamily Rental Housing; (b) Section 213, Cooperatives; (c) Section 220, Urban Renewal; (d) Section 221(d)(3), Market Rate with Limited Dividend Mortgagors and without Rent Supplement or project-based Section 8; (e) Section 221(d)(4), Market Rate, Moderate Income Families; (f) Section 231, Elderly Housing with Profit-motivated Mortgagors; (g) Section 232, Nursing Homes and Intermediate Care Facilities with Profit-Motivated Mortgagors; (h) Section 241, Supplemental Mortgages; (i) Section 242, Hospitals with any profit motivated mortgagors and all nonprofit mortgagors with mortgages for which an insurance commitment was issued on or after June 16, 1988; and (j) Section 608, Veteran Housing.

Generally, unsubsidized mortgages are not subject to prepayment restrictions. However, there are some unsubsidized mortgages which contain moderate prepayment restrictions. Some of these mortgages contained prepayment restrictions primarily because their original non-profit mortgagors received more favorable financing terms. HUD permitted prepayment only with permission of the FHA Commissioner in an effort to prevent for-profit mortgagors from using non-profit mortgagors as agents to secure the more favorable financing terms. HUD generally granted approval to prepay upon request if no fraud was evident. Since the potential for fraud occurred at the time of origination, by the time of assignment, the need for the prepayment restriction no longer exists. Having approved prepayment liberally while the mortgages were insured, HUD has no need to continue prepayment restrictions following assignment when the rationale for the restriction no longer applies.

Mortgages with moderate prepayment restrictions of this type were insured under: (a) Section 221(d)(3) Market Rate with non-profit mortgagors and with no Rent Supplement or Section 8 Assistance; (b) Section 231, Housing for the Elderly with Non-profit Mortgagors (Public and Private); (c) Section 232, Nursing Homes and Intermediate Care Facilities with Non-profit Mortgagors; (d) Section 242, Hospitals with Nonprofit Mortgagors, where a commitment was issued prior to June 16, 1988; and (e) Title XI, Group Practice Facilities.

Mortgages insured under section 207/223(f), Purchase/Refinancing of Existing Multifamily Projects, also contain moderate prepayment restrictions if the commitment was issued after October 8, 1980. For these mortgages, during the five years following final endorsement for insurance, prepayment is permitted only with permission of the FHA Commissioner. The Department has used and continues to use this prepayment restriction to prevent use of the FHA-insured mortgage as bridge financing to facilitate condominium conversion.

Because mortgages with moderate prepayment restrictions are not subsidized mortgages, this rule would authorize HUD to sell these mortgages without FHA mortgage insurance.

Under this proposed rule, mortgages on formerly coinsured projects without project-based Section 8 assistance could be sold without insurance because the projects covered by the mortgages were not subsidized and did not have prepayment restrictions (except for lock-out periods permitted for certain bond-financed mortgages).

Sale with FHA mortgage insurance is an uncomplicated way to return mortgage ownership and servicing to the private sector. HUD's policies regarding the regulation and monitoring of insured mortgages are well developed and well known in the housing industry. More importantly, however, section 203(h)(1) of the HCDA of 1978 prohibits the Secretary from selling any mortgage held by the Secretary on any subsidized project unless the project will continue to operate in a manner which provides rental housing on terms at least as advantageous to existing and future tenants as the terms of the program under which the mortgage was insured prior to the assignment of the mortgage to the Secretary. Selling mortgages with FHA mortgage insurance ensures that existing and future tenants will continue to enjoy the benefits of the original subsidized housing program, while avoiding the need to create alternative methods of providing the tenant protections that the original subsidized housing program provided. Such alternative methods would entail complicated financing and servicing mechanisms (as in the case of a bare legal title sale) or the cooperation of the mortgagor (as in the case of deed restrictions).

In addition, FHA mortgage insurance facilitates provision of private capital. Private investors and servicers have expressed interest in acquiring mortgages in HUD's portfolio. With mortgage insurance to offset almost all of the risk, private lenders and investors would be willing to purchase multifamily housing mortgages at a higher price, while HUD collects mortgage insurance premiums to protect the Government in the event of loss.

Prior to 1984, HUD enjoyed a low financial default rate on mortgages sold with insurance. HUD sold 236 mortgages, with mortgage balances

totalling $409.6 million, with insurance under section 207 pursuant to section 223(c) in the period between 1967 and 1984. Of these mortgages, 95 (with UPBs of $233.3 million) continue to be insured, 128 are no longer insured as a consequence of repayments, prepayments, or voluntary terminations of insurance. Only 13 were ever re-assigned to HUD, triggering the payment of a claim, a default rate of six percent.

While the sale of mortgages with insurance has numerous advantages, it also has some disadvantages. Sale of mortgages with FHA mortgage insurance requires HUD to budget a credit subsidy. Moreover, the sale of mortgages with FHA mortgage insurance continues HUD's responsibility to regulate the relationship between the mortgagee and the mortgagor. Regulation leads to expenditure of government staff time and money that could be devoted to other purposes.

Selling mortgages without FHA mortgage insurance is also consistent with government-wide efforts to increase Federal collections, reduce regulation in favor of competition, use Federal Government personnel more efficiently, and return functions to the private sector.

Finally, selling mortgages without FHA mortgage insurance is compatible with the objectives of the National Housing Act which formulates the goal of "a decent home and a suitable living environment for every American family," since projects should continue to provide decent and suitable housing without having a mortgage insured by FHA.

Tenants in unsubsidized projects with current mortgages would not be disadvantaged if their project mortgages are sold without FHA mortgage insurance because, with some limitations, owners of unsubsidized projects may prepay their mortgages without HUD approval at any time. Similarly, these owners (with the approval of their mortgagees) may voluntarily terminate their FHA mortgage insurance. Under current conditions, prepayment and voluntary termination are likely to occur when owners refinance existing mortgages to take advantage of lower interest rates.

Since HUD regulation of these projects can be terminated at any time, tenants in these projects would be provided rental housing on terms no less advantageous than those under which the original mortgage was insured prior to assignment, and they would be no more likely to suffer displacement. In addition, low-income tenants in projects with project-based section 8 assistance could continue to receive the section 8 assistance under existing contracts, even if the mortgage is no longer insured. This is because, subject to appropriations, it is current HUD policy to grant extensions of project-based section 8 contracts without regard to the status of the mortgage. Under this rule, HUD would require that purchasers of mortgages agree not to induce any project owner to terminate a project-based section 8 assistance contract, and, in the event of foreclosure, to assume any section 8 contract. Moreover, if an owner terminates the section 8 contract, it is current HUD policy, that, subject to appropriations, all eligible tenants would receive section 8 certificates or vouchers. Low-income tenants in projects without project-based section 8 could apply for certificates or vouchers from their local public housing authority.

Under this rule, HUD would only sell mortgages with FHA mortgage insurance to HUD-approved mortgagees. However, this rule would allow HUD to sell mortgages without FHA mortgage insurance without such a restriction.

Mortgages sold with FHA mortgage insurance would be covered by the Multifamily Mortgage Foreclosure Act, which permits HUD to require, as a condition and term of the foreclosure sale, that the purchaser agree to continue to operate the property in accordance with the terms of the original FHA mortgage insurance program. Mortgages sold with FHA insurance and subsequently foreclosed upon would also be subject to the property management and disposition provisions of section 203 of the HCDA of 1978 which provide for the preservation, in whole or part, of HUD-owned projects for low- and moderate-income persons. To guard against windfall profits by a mortgagee from the default of an insured mortgage purchased at a discount, HUD would limit insurance proceeds.

C. Sale of Delinquent Mortgages

In addition to selling current (i.e., performing) mortgages, under this rule HUD would sell some delinquent (i.e., nonperforming) unsubsidized mortgages to investors who would assume the responsibility for bringing the mortgages current, modifying them, refinancing the property, or foreclosing the mortgage. Under the proposed rule, HUD would not sell mortgages that it would normally foreclose upon; i.e., those mortgages with incurable defaults which are secured by projects occupied by low-income tenants not currently receiving rental subsidies but who would be eligible to receive rental assistance under section 203 of the HCDA of 1978 if the mortgages were foreclosed upon by HUD.

Loan restructuring is more desirable than foreclosure from both HUD's and the tenants' points of view. In foreclosure, projects undergo long periods of uncertainty, and may suffer from physical decline because owners lack an economic incentive to invest in improvements, and from management problems as owners focus attention on economically viable activities.

At the present time, however, HUD lacks sufficient staff capacity to restructure a large number of loans. By selling delinquent loans, HUD would transfer restructuring responsibility to private purchasers who could swiftly and aggressively restore projects to economic health and stability. Many more tenants would benefit from swift resolution of loan delinquencies than from foreclosure, and for this reason, HUD proposes to sell nonperforming loans.

There are three broad groups of delinquent mortgages suitable for sale: (1) Formerly coinsured mortgages, (2) mortgages on non-residential property, such as nursing homes, and (3) other unsubsidized mortgages. For formerly coinsured mortgages, it was never intended that HUD would become the holder of the mortgage or the owner of the project in the event of default. Under the coinsurance program, coinsuring lenders originally were responsible for foreclosing defaulted project mortgages and acquiring and disposing of the underlying properties. However, HUD agreed to convert coinsured mortgages to full insurance where the coinsuring lender issued GNMA mortgage-backed securities, subsequently defaulted on its obligations, and was taken over by GNMA. HUD's agreement to convert coinsured loans backed by GNMA mortgage securities to fully insured loans accounts for the formerly coinsured loans that are now in the HUD-held inventory.

Low-income tenants in formerly coinsured projects with HUD-held mortgages are now potentially eligible for assistance should HUD foreclose the mortgage or acquire and sell the property. However, most projects with coinsured mortgages were built for market-rate occupancy. As with formerly insured mortgages, the Department would not sell those delinquent coinsured mortgages that it believes cannot avoid foreclose—i.e., those that have large unresolvable delinquencies, if those properties are occupied by low-income tenants not currently receiving rental subsidies who

would do so under section 203 of the HCDA of 1978 if HUD foreclosed upon the mortgage.

Non-residential properties, such as nursing homes, do not have landlord-tenant relationships and do not qualify for subsidy protection under Section 203. Loans on these properties are particularly suitable for a sale, because workout and renegotiation of these mortgages requires a range of specialized skills and knowledge not widely possessed by HUD staff.

Finally, while some unsubsidized mortgages will continue to be foreclosed and the property sold by HUD, many unsubsidized mortgages will be sold in periodic sales in order more quickly and effectively to reinstate, refinance, or modify the mortgages and return the projects to stable operating condition. As noted above, the projects covered by unsubsidized mortgages to be sold would be occupied by tenants already paying market rate rental. Since projects would continue to be governed by market conditions following private mortgage restructuring, mortgage sales would be unlikely to result in involuntary tenant displacement.

D. Sale of Subsidized Mortgages to State Agencies

In addition to selling mortgages to private investors and FHA-approved mortgagees, HUD will consider selling subsidized HUD-held mortgages to interested State and local governments on a negotiated basis. Section 203(h)(3) of the HCDA of 1978 authorizes negotiated sales to State or local governments, or a group of investors which includes an agency of a State or local government provided that: (1) The terms of the sale include an agreement by the State or local government, or agency of same to act as mortgagee or owner of a beneficial interest in the mortgage, and ensure that the project will maintain occupancy by the tenant group originally intended to be served by the subsidized housing program; and (2) the sales price is the best price that the Secretary can obtain from an agency of a State or local government, while maintaining occupancy for the tenant group originally intended to be served by the subsidized housing program.

HUD is particularly interested in public comment from State and local governments as to what criteria HUD should use in determining whether to sell to State and local governments rather than private investors.

II. Other Matters

A. Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington DC.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12612, 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. As a result, the rule is not subject to review under the order. Specifically, the requirements of this rule are directed to HUD, and do not impinge upon the relationship between Federal government and State and local governments.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not affect the ability of small entities, relative to larger entities, to bid for and acquire HUD-held mortgages that HUD determines to sell.

F. Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402) under Executive Order 12291 and the Regulatory Flexibility Act, and therefore was submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

List of Subjects in 24 CFR Part 290

Mortgage insurance, Law and moderate-income housing.

Accordingly, 24 CFR part 290 would be amended to read as follows:

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS AND CERTAIN MULTIFAMILY PROJECTS SUBJECT TO HUD-HELD MORTGAGES; SALE OF HUD-HELD MORTGAGES

1. The authority citation for part 290 would continue to read as follows:

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b; 42 U.S.C. 3535(d).

2. Section 290.1 would be revised to read as follows:

§ 290.1 Applicability.

This part applies to HUD-owned multifamily housing projects and to rental housing projects that are subject to mortgages held by HUD. Specific provisions, as noted in the regulatory text, apply only to "rental housing projects" as defined in § 290.3, including a HUD-owned rental housing project.

3. In § 290.3, a definition for "subsidized mortgage" and "unsubsidized mortgage" would be added in alphabetical order, and paragraph (5) of the definition of "subsidized rental housing project" would be revised to read as follows:

§ 290.3 Definitions.

* * * * *

Subsidized mortgage means a mortgage on a subsidized rental housing project.

Subsidized rental housing project * * *

* * * * *

(5) Housing assistance payments under section 23 of the United States

Housing Act of 1937 in effect before January 1, 1975, or section 8 of the United States Housing Act of 1937, if:

(i) For purposes of subparts A, B, and C of this part, more than 50 percent of the units in the project are receiving such assistance; or

(ii) For purposes of subpart D of this part, any of the units in the project are receiving such assistance.

Housing assistance payments under the section 8 Rental Certificate program, 24 CFR part 882, subparts A, B, C, and F, and the section 8 Rental Voucher program, 24 CFR part 887, are excluded in determining whether a project is a subsidized rental housing project.

Unsubsidized mortgage means any HUD-held mortgage which is not a subsidized mortgage.

* * * * *

4. A new subpart D would be added to part 290 to read as follows:

Subpart D—Sale of HUD-Held Mortgages

290.200 Purpose
290.201 Sale of Subsidized HUD-held Mortgages
290.202 Sale of Unsubsidized HUD-held Mortgages

Subpart D—Sale of HUD-Held Mortgages

§ 290.200 Purpose.

The purpose of this subpart is to set forth HUD's policy regarding the sale of subsidized and unsubsidized HUD-held mortgages.

§ 290.201 Sale of Subsidized HUD-Held Mortgages.

HUD's policy for selling subsidized HUD-held mortgages is as follows:

(a) HUD will sell current mortgages with FHA mortgage insurance on a competitive basis to FHA-approved mortgagees; or

(b) HUD will sell current mortgages on a negotiated basis to State or local governments, or a group of investors which includes an agency of a State or local government if:

(1) The terms of the sale include an agreement by the State or local government, or agency of same to act as mortgagee or owner of a beneficial interest in the mortgage, and ensure that the project will maintain occupancy by the tenant group originally intended to be served by the subsidized housing program; and

(2) The sales price is the best price that the Secretary can obtain from an agency of a State or local government, while maintaining occupancy for the tenant group originally intended to be served by the subsidized housing program.

(c) HUD will sell current mortgages without FHA mortgage insurance if HUD can offer protections equivalent to an insured sale.

(d) HUD will sell delinquent mortgages only if as part of the sales transaction those mortgages are restructured and either FHA mortgage insurance or equivalent protections are provided.

§ 290.202 Sale of Unsubsidized HUD-Held Mortgages.

HUD's policy for selling unsubsidized HUD-held mortgages is as follows:

(a) HUD will sell current unsubsidized mortgages with or without FHA mortgage insurance.

(b) HUD will sell delinquent unsubsidized mortgages without FHA mortgage insurance.

(c) HUD will not sell delinquent mortgages if it believes that foreclosure is unavoidable, and the project securing the mortgage is occupied by low-income tenants who are not receiving housing assistance but would do so if HUD foreclosed upon the mortgage.

Dated: March 16, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–8620 Filed 4–12–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 220

RIN 1010–AB46

Extension of Time Period for Maintaining Records on Outer Continental Shelf Net Profit Share Oil and Gas Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) previously published a Notice of Proposed Rulemaking to amend its offshore Net Profit Share Lease (NPSL) regulations relating to record maintenance requirements and certain audit requirements. The MMS now is issuing a further notice of proposed rulemaking on this proposed change.

DATES: Written comments must be received on or before June 13, 1994.

ADDRESSES: Mail your written comments to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff at (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rule is David A. Hubbard of the MMS Royalty Management Program, Valuation and Standards Division, Lakewood, Colorado.

I. Background

(a) History of NPSL Accounting Rules

A chronology of the NPSL rules follows:

- May 30, 1980—before Congress passes the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C., 1701 *et seq.*—the Department of Energy (DOE) publishes regulations on accounting procedures for offshore NPSL's (10 CFR part 390).
- December 1981—the Secretary of the Interior receives authority to administer the NPSL rules (Pub. L. 97–100).
- January 11, 1983 (48 FR 1182)—NPSL rules transferred to the Department of the Interior (Department), MMS, and redesignated 30 CFR part 261.
- August 5, 1983—30 CFR part 261 is redesignated 30 CFR part 220 (48 FR 35642).

(b) Current and Original Rules Compared

Other than minor administrative changes, MMS' version of the NPSL accounting rules in 30 CFR part 220 duplicates DOE's original rules in 10 CFR part 390. Both provide that:

- Ledger cards showing charges and credits to the NPSL capital account must be maintained for 36 months after the lessee ceases NPSL operations;
- All other documents, journals, and records must be maintained for 36 months from the due date or date of mailing of the statement of account on an NPSL, whichever comes later;
- The Department has the right to start an audit any time within 36 months of the due date of the statement to be audited or the date it was mailed, whichever is later.

(c) NPSL vs. FOGRMA Recordkeeping Requirements

The record maintenance periods in the NPSL rules conflict with current statutory record maintenance requirements on all Federal and Indian oil and gas leases, including leases on the OCS. Section 103 of FOGRMA, 30 U.S.C. 1713, "Required Recordkeeping,"

states, in part that a lessee, operator, or other person * * * shall establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require * * *. Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe * * * the appropriate records, reports, or information * * * shall be made available for inspection and duplication by such officer or employee, State, or Indian tribe. Records * * * shall be maintained for 6 years * * * unless the Secretary notifies the record holder that he has initiated an audit * * * and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.

Section 3(5) of FOGRMA, 30 U.S.C. 1702, defines the term "lease" to include "any * * * profit share arrangement * * * issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas." So, FOGRMA applies to NPSL records.

(d) General MMS Recordkeeping Rules

The MMS issued regulations at 30 CFR 212.50, "Required recordkeeping and reports," after FOGRMA's enactment. They state in part that all records * * * shall be maintained * * * for 6 years * * * unless the recordholder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

Paragraphs (a) and (b) of MMS regulations at 30 CFR 212.51, "Records and files maintenance," state in part that each lessee * * * shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, *net profit shares*, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders * * *. Lessees * * * required to keep records under this section shall maintain and preserve them for 6 years * * * unless the Secretary notifies the recordholder of an audit * * * and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released in writing from the obligation to maintain the records * * *.

Thus, part 212 specifically requires that NPSL records be maintained at least 6 years after generation. Under § 212.50, this period may be longer if the recordholder is notified in writing.

(e) Who Is Responsible for NPSL Reporting?

The June 11, 1981, Notice to Lessees for Implementation of Net Profit Share Accounting for OCS Oil and Gas Leases, 46 FR 30897, clarifies NPSL reporting responsibilities. It states:

- The designated NPSL operator must meet the reporting requirements of 30 CFR 390.031 (1980) (now 30 CFR 220.031 (1992)) for all lease interest holders.
- Until production starts, each operator must file an annual report by 60 days after the lease anniversary date.
- After production starts, a monthly report must be filed and payments made.
- Each operator is responsible for making NPSL payments.

Further, the MMS *Oil and Gas Payor Handbook*, vol. II, section 3.3.8, states that NPSL operators must file a Report of Sales and Royalty Remittance (Form MMS–2014) monthly.

(f) First Proposed Rule

On June 7, 1990, MMS published a Notice of Proposed Rulemaking in the **Federal Register** (55 FR 23248). The MMS proposed to amend the FOGRMA implementation requirement at 30 CFR 220.030 to make its recordkeeping requirements the same as FOGRMA's and those of 30 CFR 212.50 and 212.51. The MMS proposed the changes because the NPSL accounting procedures predate and conflict with FOGRMA and MMS' general recordkeeping rules.

The MMS also proposed to delete 30 CFR 220.033 because 30 CFR 217.50 already applies to all oil and gas audits, including NPSL's. The MMS is preparing separately a proposed rulemaking to revise 30 CFR part 217, Audits and Inspections; NPSL audit requirements will be included in that rulemaking.

(g) Agreements With Operators

After MMS published the proposed rule, it signed agreements with over half of the existing NPSL operators. Under these agreements operators can either supply NPSL records directly to MMS or maintain them until MMS completes a lease audit. All who signed the agreement opted to maintain the records themselves rather than send them to MMS.

II. Further Notice of Proposed Rulemaking

The June 1990 proposed rule would have assured consistency between the NPSL rules and FOGRMA by putting the FOGRMA 6-year recordkeeping requirements in the NPSL rules. But, given the audit needs described in paragraph IV below, MMS concluded that a modified approach was needed.

The main thrust of this revised proposed rule parallels the recordkeeping agreements now in place between MMS and a majority of NPSL operators. Because of this substantial change from the June 1990 proposed rule, MMS is publishing this revised proposed rule in the **Federal Register** for public review and comment.

The MMS received comments from one industry respondent on the June 1990 proposed rulemaking. Those comments were considered in this revised proposed rulemaking; they are discussed in paragraph III below. The revised proposed rule is summarized and discussed in paragraph IV below.

III. Comments Received on June 1990 Proposed Rule

The June 1990 proposed rule provided for a 30-day public comment period ending July 9, 1990. We received comments from one industry source.

(a) The commenter felt a period longer than 30 days should be allowed for comments on the proposed rulemaking. They felt MMS had ample time since FOGRMA's enactment to make the proposed amendment, and to allow only a 30-day comment period was not justified.

MMS Response: The MMS received comments from only one source, and no one else asked for more time. Thus, MMS believes the 30-day comment period was long enough for all interested parties to reply to the proposed rule.

(b) The commenter said the amendments must be prospective from the effective date of the final rule.

MMS Response: Section 305 of FOGRMA states that the provisions of this Act shall apply to oil and gas leases issued before, on, or after the date of the enactment of this Act, except that in the case of a lease issued before such date, no provision of this Act or any rule or regulation prescribed under this Act shall alter the express and specific provisions of such a lease.

Since NPSL lease terms do not include time periods for keeping records, NPSL's have been subject to FOGRMA's requirements as a matter of law since its enactment in 1983. Thus, the proposed changes would not be "retroactive."

(c) The commenter said there were a number of leases issued under the initial regulations—i.e., 10 CFR 390.030, 390.033, and 390.034, now unchanged at 30 CFR 220.030, 220.033, and 220.034—but after enactment of FOGRMA section 103, and these leases must be grandfathered.

MMS Response: As discussed above, section 103 of FOGRMA applies to all NPSL's; section 305 is clear on this point. The fact that some NPSL's were issued while the initial regulations were in effect, but after FOGRMA's enactment, has no bearing on the applicability of section 305 or the section 103 recordkeeping requirements. Statutory requirements always supersede inconsistent regulatory obligations.

(d) The commenter did not agree that § 220.033, Audits, should be removed in favor of § 217.50. The commenter gave no reasons for this objection.

MMS Response: The MMS proposed to delete § 220.033 to clarify that NPSL audits will be subject to procedures already described in 30 CFR part 217. The MMS is preparing a proposed rulemaking to revise 30 CFR part 217; it will address NPSL audits. There is no need to duplicate the NPSL audit requirements in § 220.033.

IV. Summary of Revised Proposed Rule

(a) Need for Rule

This revised proposed rulemaking amends § 220.030 to clarify that the minimum period for maintaining records on NPSL's, like all other lease subject to FOGRMA, is 6 years after record creation. In some cases lessees create NPSL cost records, but production may not start for several more years; thus an MMS audit logically may not start for more than 6 years past first record creation. Although the audit may not begin before production starts or before long cost accrual periods pass, all costs accumulated in the NPSL capital account after lease issuance affect the account balance in later periods. Thus, unlike leases where production costs do not affect royalties, NPSL records need long-term maintenance so MMS can properly verify the capital account balance at the start of any period.

(b) MMS Proposal

To preserve the required records until an audit begins, MMS proposes that the current NPSL operator furnish all records on the NPSL capital account to the Deputy Associate Director for Audit as they are created, on an annual basis. Or, the operator could sign an agreement to maintain the records for 6 years after cessation of operations and provide them for audit as needed. Then the operator would keep the records until notified by MMS that they are no longer needed. The MMS already has signed such agreements with a majority of the current NPSL operators.

The proposed rule would require the operator to provide MMS all NPSL capital account records the operator now holds that are older than 6 years—unless the operator agrees, in writing, to maintain them and furnish them to MMS on request. Also, § 220.031(c) would be changed to clarify NPSL reporting and payment requirements. Lastly, the existing § 220.033 would be removed and § 220.034 revised and redesignated as a new § 220.033.

(c) Public Comment

The MMS's policy is to give the public a chance to take part in the rulemaking process whenever possible. So, you may send written comments or suggestions about this notice to the location shown in the **ADDRESSES** section of this preamble. Comments must be received by the date identified in the **DATES** section of this preamble.

V. Procedural Matters

The Regulatory Flexibility Act

The rule is needed to conform regulations to existing statutory requirements. The Department has determined that this rulemaking 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.).

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action requiring review by the Office of Management and Budget.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 220

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: February 25, 1994.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, it is proposed to amend 30 CFR part 220 as follows:

PART 200—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OCS OIL AND GAS LEASES

1. The authority citation for part 220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95–372, 92 Stat. 643 (43 U.S.C. 1337).

2. Paragraph (b) of § 220.030 is revised to read as follows:

§ 220.030 Maintenance of records.

* * * * *

(b) The Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1713, requires that NPSL records be maintained for 6 years after they are generated unless the Secretary or designee notifies the record holder that an audit or investigation involving such records has begun, and that they must be kept longer. Because NPSL audits or investigations may not start within 6 years of lease record creation, the NPSL operator must provide records under either paragraph (b)(1) or (b)(2):

(1) The current NPSL operator must provide MMS all the NPSL capital account records annually through the end of lease operations. The first records must be supplied within [60 days following the final rule's effective date], or, for new operators, within 60 days of the date they become the new operator; all NPSL records created up to that time,

except any provided earlier, must be included. Following the initial submission the operator must submit records each calendar year through cessation of operations by January 31 of the year following the end of the calendar year. The records must be mailed to the Minerals Management Service, Royalty Management Program, Deputy Associate Director for Audit, P.O. Box 25165, Denver, Colorado 80225–0165; or

(2) The current NPSL operator may sign an agreement with MMS to maintain records on the NPSL capital account for 6 years after cessation of operations and make them available to MMS for audit or investigation on request. This signed agreement must be received by MMS on or before the date the initial records must be supplied under paragraph (b)(1) of this section, and submitted to MMS at the address under paragraph (b)(1). Under the agreement, records must be kept until an audit or investigation is completed and the Director releases the recordholder from maintaining the records. But, if other sources later show evidence of possible fraud, collusion, or underpayments, MMS may further examine records and transactions of earlier audit periods.

3. Paragraph (c) of § 220.031 is revised to read as follows:

§ 220.031 Reporting and payment requirements.

* * * * *

(c) Each lessee subject to this part shall submit with the required Form MMS–2014, which shall be due at the same time as the report required in paragraph (b) of this section, any net profit share payment due the United States for the period covered by the report.

* * * * *

220.032 [Amended]

4. Paragraph (d) of § 220.032 is amended by revising the reference to "§ 220.033" in the first sentence to read "30 CFR part 217."

§ 220.033 [Removed]

5. Section 220.033 is removed.

§ 220.034 [Redesignated as § 220.033]

6. Section 220.034 is redesignated as § 220.033.

7. Paragraph (a) of redesignated § 220.033 is revised to read as follows:

§ 220.033 Redetermination and appeals.

(a) If an inspection of records or an audit causes the Director to find an error in the NPSL capital account or the net profit share payment—whether in favor of the Government or the lessee—the Director will redetermine the net profit share base, recalculate the net profit share payment due the United States, and notify the lessee of the recalculation.

* * * * *

[FR Doc. 94–8810 Filed 4–12–94; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Baltimore 94–003]

Safety Zone Regulation: Hammerman Area of Gunpowder Falls State Park, Baltimore County, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is considering a proposal to establish a safety zone for the purpose of the third annual Maryland "Swim For Life", at the request of the Maryland "Swim For Life" Committee of Baltimore, Maryland. The "Swim For Life" event will consist of a two and a one half mile swim to be held at the Hammerman area of Gunpowder Falls State Park, Gunpowder River, Maryland. The Swim will start at Hammerman area beach number five, to the Maxwell Point buoy, thence to Oliver Point buoy and thence to Hammerman area beach numbers one and two. The safety zone is necessary to control small craft and recreational vessel traffic, and to provide for the safety of life and property on U.S. navigable waters from the hazards associated with this swimming event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: Comments must be received on or before May 13, 1994.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022. Comments and other materials referenced in this notice will be available for inspection and copying at the above address in room 343. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Timothy P. Ryan, (410) 962–2651.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data and arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP Baltimore 94–003) and the specific section of the proposal to which their comments apply, as well as give reasons for each comment. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposed regulation may be changed in light of comments received. No public hearing is planned, 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 aid the rulemaking process.

Background and Purpose

In November, 1993, an application was received by U.S. Coast Guard Group Baltimore from the Maryland Swim For Life Committee, requesting a safety zone for the "Swim For Life" event. This event is to be held in the Hammerman area of Gunpowder Falls State Park, Gunpowder River, Maryland, on June 18, 1994. As part of their application, the "Swim For Life" Committee requested the Coast Guard provide control of spectator and commercial traffic during the swimming event.

Discussion of Regulations

This regulation is necessary to ensure the safety of spectator craft, recreational vessels as well as swimmers participating in the event, and to provide for the safety of life and property on U.S. navigable waters during the event. Since the Gunpowder Falls river will not be closed for an extended period, vessel traffic should not be severely disrupted.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are Chief Warrant Officer Timothy P. Ryan, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Monica Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44

FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "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).

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this rule will have a significant economic impact on your business, please submit a comment (See **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this rule will economically affect your business.

Collection of Information

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

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 rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

In consideration of the foregoing, subpart F of 165 of title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

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

2. In part 165 a temporary 165.T05–019 is added to read as follows:

§ 165.T05–019 Safety Zone: Hammerman Area of the Gunpowder Falls State Park, Gunpowder State Park, Maryland.

(a) *Location.* The following area is a safety zone: All waters 500 yards either side of a line connecting the following points beginning at

Latitude	Longitude
39° 21.8′ N.	76° 20.4′ W., thence to
39° 21.6′ N.	76° 19.9′ W., thence to
39° 22.6′ N.	76° 20.2′ W., thence to
39° 21.8′ N.	76° 20.4′ W.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 13.

(d) *Regulations.* (1) Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (2.a.) of these regulations, but may not block a navigable channel.

(e) *Effective Dates.* This section is effective from 7 a.m. June 18, 1994, to 1 p.m. June 18, 1994; the alternate day will be June 19, 1994, encompassing the same area description and time frame; unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: April 1, 1994.

G.S. Cope,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 94–8836 Filed 4–12–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 261 and 262

Prohibitions; Law Enforcement Support Activities

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On February 16, 1994, at 59 FR 7880, the Forest Service published a proposed rule to 36 CFR parts 261 and 262, Prohibitions; Law Enforcement Support Activities. The Department of Agriculture gave notice that this proposed rule would provide a comprehensive revision of the acts prohibited on the National Forest System which are enforced by personnel of the Forest Service. The proposed revisions respond to emerging law enforcement issues, the enactment of new laws, and the promulgation of new rules that have occurred since the subject rules were last revised. The public comment period was to expire on April 18, 1994. The public has asked for more time to respond and comment on this proposed rule, therefore, the Forest Service is extending the public comment period until May 18, 1994.

DATES: Written comments must be received in writing and postmarked no later than May 18, 1994.

ADDRESSES: Send written comments to Director, Law Enforcement and Investigations (5300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Jack Gregory, Law Enforcement and Investigations Staff, (912) 267–2471 or Kathryn Toffenetti, Office of the General Counsel, Natural Resources Division, (202) 720–2651.

Dated: April 7, 1994.

Jack Ward Thomas,

Chief, Forest Service.

[FR Doc. 94–8850 Filed 4–12–94; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP4F4284/R2051; FRL–4771–8]

Bacillus Subtilis MBI 600; Proposed Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes establishing an exemption from the requirement for a tolerance for residues of the biofungicide *Bacillus subtilis* MBI 600 in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. This exemption was requested by Gustafson, Inc., Dallas, Texas.

DATES: Written comments, identified by the document control number [PP4F4284/R2051], must be received on or before May 13, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway., Arlington, VA 22202, (703) 305–6900.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney C. Jackson, Acting Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6900.

SUPPLEMENTARY INFORMATION: EPA received from Gustafson, Inc., P.O. Box 660065, Dallas, Texas 75266–0065, pesticide petition (PP) 4F4284 on March 2, 1993, proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug and Cosmetics Act, 21 U.S.C 346a and 371, to exempt from the requirement of a tolerance the residues of the biofungicide *Bacillus subtilis* MBI 600 in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. The notice of application to register *Bacillus subtilis* MBI 600 as a new active ingredient was published in the **Federal Register** (58 FR 67791) on December 22, 1993. No comments were received in response to the FR Notice.

Strain MBI 600 of the bacterium *Bacillus subtilis* is a naturally occurring isolate of the spore-forming genus *Bacillus* which was first isolated from faba bean plants growing at Nottingham University School of Agriculture, Sutton Boningham, United Kingdom. *Bacillus subtilis* is a soil saprophyte found world-wide. Strains of this organism are not generally regarded as human or animal pathogens. The product is intended to be used as a seed treatment. When applied to seeds, the bacteria colonize the developing root system, competing with disease organisms which attack roots.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in the rat, an acute dermal toxicity study in the rabbit, an acute pulmonary toxicity/pathogenicity study in the rat, an acute intravenous toxicity/pathogenicity study in the rat, a primary eye irritation study in the rabbit, and a delayed contact hypersensitivity study in the guinea pig. These studies were performed on the active ingredient and the end-use product Gus 376 Concentrate Biological Fungicide. A review of these studies indicated that the biofungicide was not toxic to test animals when administered via the oral, dermal, intravenous or pulmonary routes. The active ingredient was not infective or pathogenic for test animals when administered via the oral, pulmonary or intravenous route. The end-use product produced slight ocular irritation which dissipated within 4 days of dosing. An overall moderate skin sensitization reaction was noted in the treated guinea pigs 24 to 72 hours following treatment. No reports of hypersensitivity have been recorded from personnel working with this organism. All of the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable human or domestic health hazards likely to arise from the use of the product as a seed treatment.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrated that this biological control agent is not toxic to humans. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

Bacillus subtilis MBI 600 is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is proposed as set forth below.

Interested persons are invited to submit written comments on the proposed rule. Comments must bear a notation indicating the document control number [PP4F4284/R2051]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the Virginia address given above from 8 a.m to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental Protection, Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 5, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticides Programs.

Therefore, 40 CFR part 180 is amended as follows:

Part 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new §180.1128, to read as follows:

§180.1128 Bacillus subtilis MBI 600; exemption from the requirement of a tolerance.

The biofungicide *Bacillus subtilis* MBI 600 is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a seed treatment on seeds used for growing agricultural crops in accordance with good agricultural practices.

[FR Doc. 94–8875 Filed 4–12–94; 8:45 am]
BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 59, No. 71
Wednesday, April 13, 1994

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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 4 p.m. on Wednesday, April 27, 1994, at the Red Lion, 1000 NE. Multnomah, Portland, Oregon 97232. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jeannette Y. Pai or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 5, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–8829 Filed 4–12–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 14–94]

Foreign-Trade Zone 141—Rochester, NY; Application for Subzone Status, Gleason Corporation Plant (Gear Production Machinery), Rochester, NY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Monroe, New York, grantee of FTZ 141, requesting special-purpose subzone status for the manufacturing plant (gear production machinery) of the Gleason Corporation (Gleason), located in Rochester, New York ("The Gleason Works"). 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 March 28, 1994.

The Gleason Works (37 acres/721,371 sq.ft.) is located at 1000 University Avenue, in central Rochester (Monroe County), New York. The facility (777 employees) is used to produce spiral bevel and parallel axis gear manufacturing equipment, including gear generators, hobbers, grinders, sharpeners, testers, and gear lapping equipment (duty rate range: 4.4—5.8%). Components purchased from abroad (some 12% of total) include ball screws (HTS# 8483.40.8000, duty rate—5.7%) and process controllers (HTS# 8537.10.0030, 5.3%). The finished machinery is used in the automotive, aerospace, truck and heavy equipment industries. Some 50 percent of the equipment is exported.

Zone procedures would exempt Gleason from Customs duty payments on the foreign components used in export production. On its domestic sales, Gleason would be able to choose the duty rates that apply to finished gear production equipment for the foreign components noted above. The application indicates that the savings from zone procedures would help improve Gleason's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is on June 13, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 27, 1994).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Branch Office, 111 East Avenue, suite 220, Rochester, New York 14604,

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: April 4, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–8910 Filed 4–12–94; 8:45 am]

BILLING CODE: 3510–DS–P

International Trade Administration

[A–588–806]

Electrolytic Manganese Dioxide from Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Mark Wells, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0922 and (202) 482–3003, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1993 (58 FR 18374), the Department of Commerce (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review." In response to the request made by Petitioners, Chemetals Inc. and Kerr-McGee Chemical Corporation, the Department initiated the administrative review on May 27, 1993 (58 FR 30767) of the antidumping duty order on Electrolytic Manganese Dioxide (EMD) from Japan on April 17, 1989 (54 FR 15244). The review covers one manufacturer/exporter of the subject merchandise to the United States, Tosoh Corporation (TOSOH) during the period, April 1, 1992, through March 31, 1993. The Department is conducting this review in accordance with section 751

of the Tariff Act of 1930, as amended (the Act).

As a result of this review, the Department has preliminarily determined to assess antidumping duties of 77.43 percent *ad valorem* based on best information available (BIA) for the period of review.

Interested parties are invited to comment on these preliminary results.

Scope of Review

Imports covered by the review are shipments of electrolytic manganese dioxide. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. During the review period, such merchandise was classifiable under subheading 2820.10.000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written description remains dispositive.

On January 6, 1992, the Department published a final scope ruling, *Electrolytic Manganese Dioxide from Japan; Final Scope Ruling* (57 FR 395; January 6, 1992), in which it affirmed that high-grade chemical manganese dioxide (CMD–U) is a "later-developed product" and is included within the scope of the order on EMD from Japan. For a detailed discussion of that ruling, see *Electrolytic Manganese Dioxide from Japan; Preliminary Scope Ruling* (56 FR 56977; November 7, 1991).

Preliminary Results of the Review

This review covers EMD entries into the United States by one manufacturer/exporter, TOSOH. Given the TOSOH did not respond to the Department's questionnaire, we consider it to be an uncooperative respondent, and have assigned to it a margin based on best information available. Our practice, for uncooperative respondents, is to apply as BIA the higher of (1) the highest of the rates found for any firm in the less-than-fair-value (LTFV) investigation or prior administrative reviews, or (2) the highest rate found in this review for any firm (see *Final Results of Administrative Review: Antifriction Bearings (other than Tapered Roller Bearings) from France* (58 FR 39729, 39739, July 26, 1993)). Therefore, we used, as BIA, the highest of the rates found for any firm in the *Final Determination of the Antidumping Duty Investigation of EMD from Japan* (54 FR 8778, March 2, 1989), which is 77.43 percent.

As a result of this review, we preliminarily determine that the following margin exists for the review period:

Manufacturer/exporter	Time period	Margin (percent)
TOSOH .	04/1/92–03/31/93	77.43

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries for the period of review. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the 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 by section 751(a)(1) of the Act. A cash deposit of estimated antidumping duties based on margins for the period of April 1, 1992, through March 31, 1993, shall be required on all shipments of subject merchandise from Japan, as follows:

(1) The cash deposit rate for the reviewed company will be that 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 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) 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 the "all other" rate established in the LTFV investigation (54 FR 8778) of 73.30 percent, as discussed below.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (1993), and *Federal Mogul Corporation* v. *United States*, 839 F. Supp. 864 (1993), decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

In proceedings governed by antidumping findings (*i.e.*, proceedings originally investigated by the Treasury Department), unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department adopts the "new shipper" rate established in the first final results of administrative review published by the Department of Commerce (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding was investigated by the Department of Commerce, it is governed by an antidumping duty order. Therefore, the "all others" rate for the purposes of this review will be 73.30 percent, the "all others" rate established in the LTFV investigation (54 FR 8778).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least seven copies must be submitted to the Assistant Secretary for Import Administration no later than April 25, 1994, and rebuttal briefs, no later than May 5, 1994. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal brief. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on May 12, 1994, at 1:30 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This administrative review 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.

Dated: April 5, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–8908 Filed 4–12–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 13, 1994.

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, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

Background

On October 21, 1977, the Department of the Treasury published in the **Federal Register** (42 FR 56110) the antidumping finding on pressure sensitive plastic tape (PSPT) from Italy. On October 18, 1993, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (58 FR 53709). On October 27, 1993, the petitioner, Minnesota Mining and Manufacturing Company (3M), requested that we conduct an administrative review for the period October 1, 1992, through September 30, 1993. We published a notice of initiation of the antidumping administrative review on November 17, 1993.

The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of PSPT measuring over 1⅜ inches in width and not exceeding 4 mils in thickness, classifiable under item numbers 3919.90.20 and 3919.90.50 of the Harmonized Tariff Schedules (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

Preliminary Results of Review

Because the single manufacturer/ exporter subject to review, NAR, had no shipments of this merchandise to the United States during the period of review, the Department has preliminarily assigned NAR the rate applicable to it from its most recent administrative review as the estimated cash deposit rate. This rate is 1.24 percent.

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)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate 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, or the original less-than-fair-value 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 not previously reviewed will be 12.66 percent, the "new shipper" rate established in the first notice of final results of administrative review published by the Department (48 FR 35686, August 5, 1983).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, 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 this administrative review, including its results of its analysis of issues raised in any such written comments.

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: April 5, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–8906 Filed 4–12–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–806]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 3, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on sweaters wholly or in chief weight of man-made fiber from Korea. The review covers 69 manufacturers/exporters and the period April 27, 1990 through August 31, 1991.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received we have changed the results from those

presented in the preliminary results of review.

EFFECTIVE DATE: April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer, G. Leon McNeill, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 39036) the antidumping duty order on sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Korea. On September 30, 1991, the petitioner, the National Knitwear & Sportswear Association (NKSA), requested that we conduct an administrative review, in accordance with section 353.22(a) of the Department's regulations (19 CFR 353.22(a)). We published the notice of initiation of the antidumping duty administrative review on October 18, 1991 (56 FR 52254), covering the period April 27, 1990 through August 31, 1991. On December 3, 1993 the Department published the preliminary results in the **Federal Register** (58 FR 63920). The initiation notice named 69 companies. Of these 69 companies, the following six companies were selected to be analyzed, using sampling techniques: Chunji Industrial Company, Ltd. (Chunji), Kee Ryung Industrial Company, Ltd. (Kee Ryung), Suhcheon Company, Ltd. (Suhcheon), Tae Kwang Industrial Company, Ltd. (Tae Kwang), Young Woo & Company, Ltd. (Young Woo), and Yurim Company, Ltd. (Yurim). The other companies included in the sample pool have received a rate which is the simple average of the margins of these six companies. The Department has now conducted the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of MMF sweaters from Korea. MMF sweaters are defined as garments for outerwear that are knitted or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom, and cuffs on the sleeves (if any), encompassing garments of various lengths, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's, women's, boys', or girls' sweaters, as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, it includes only those with a knit-on rib at the bottom.

Garments which extend below mid-thigh or cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not considered sweaters and are excluded from the scope of the review. Also specifically excluded from the scope are sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Korea and entering under Harmonized Tariff Schedule (HTS) item number 9902.61.

The subject merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.60, 6110.30.10.10, 6110.30.10.20, 6110.30.20.10, and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received collective comments from Chunji, Kee Ryung, Suhcheon, Tae Kwang, Young Woo, and Yurim. No interested party submitted a rebuttal.

Comment 1: Respondents argue that the Department's excessive reliance on constructed value (CV) distorted the calculation of the dumping margins. They contend that the Department should rely on CV as the basis for foreign market value (FMV) only with respect to U.S. sales for which there are no similar, above-cost, contemporaneous models sold in the third-country market. They note that 19 U.S.C. 1677b(a)(1) directs the Department to base FMV on home market prices or, if home market sales are inadequate, third-country prices, unless there are insufficient sales above cost in the appropriate market.

Respondents claim that the Department's use of the "10/90/10" test on a product-specific basis is inappropriate and contrary to the mandate of the antidumping statute because it leads the Department to disregard infrequent below-cost sales. As respondents explain the test, if between 10 and 90 percent of third-country sales are below cost, the Department excludes below-cost sales, basing FMV on the remaining above-cost sales. If over 90 percent of third-country sales are below cost, the Department excludes all third-country sales and bases FMV entirely on CV. Below-cost sales are included in the calculation of CV if the volume of such sales is less than ten percent. Respondents claim that in past cases, including the original investigation, the Department has applied the 10/90/10 test on total sales of such or similar merchandise, and argue that this approach contemplates that, under some circumstances, all sales of certain models may be below cost because the sales may be of obsolete or end-of-the-year models. They argue that when the test is applied on a product-specific basis, the sales of such models will almost always be disregarded in calculating the FMV even though, viewed in the aggregate, they are infrequent in number.

Respondents state that the Department has recently begun applying a two-tiered 10/90/10 system in which first the Department applies the test, called the "macro test," to total third-country sales; if the macro test indicates that between 10 and 90 percent of total sales are below cost, the Department then applies a second 10/90/10 test, called the "micro test," to each individual model sold in the third country. Respondents go on to say that, more recently, the Department has in several cases applied only the micro test.

Respondents contend that the Department's reliance solely on the micro test is particularly distortive in this proceeding, because there is frequently only one sale for each individual product. In many instances, therefore, the third-country product will be either totally above or totally below cost, even though only an insignificant fraction of total third-country sales may be below cost. They argue that the Department should have used the alternate third-country price data for the next most similar model in calculating the FMV since they have provided ample third-country price data for the top three most similar models.

Respondents also contend that the Department, in considering only one particular third-country model as "such or similar merchandise," compounds its bias for CV. Respondents claim that a large number of physical differences in sweaters make precise systemization and quantification of such differences for model matching purposes impossible. Identification of a single best match is, therefore, highly arbitrary. They argue that, by contrast, pricing and cost are not arbitrary because exporters face the same cost curve and compete based on relative mark-up. They contend that for their six firms there are, on average, 50 third-country models within a 20 percent cost range for each U.S. model. Respondents also claim that the Department's refusal to use prices for alternative third-country merchandise is tantamount to finding that there is only one "such or similar" third-country match for each U.S. model.

Respondents ask that for the final results the Department use CV only if there are insufficient above-cost sales of similar products in the third country. They suggest that the Department implement this method by dropping all below-cost third-country sales before creating its product concordance, thereby matching U.S. sales only to above-cost third-country sales.

Department's Position: We disagree with respondents that we relied excessively on CV. Specifically, we disagree with their claim that a "macro" test, rather than a model-specific, or "micro," test, is the appropriate method of determining what below-cost sales should be disregarded. Section 773(b) of the Tariff Act directs us to disregard below-cost sales in calculating FMV. As FMV is based on a model-specific comparison and focuses on the prices actually used for FMV, employing a model-specific methodology is the most appropriate approach to the 10/90/10 test. For this reason, we have rejected using the "macro" test and have only tested individual models for sales below-cost.

We also disagree with respondents' argument that we should drop all below-cost third-country sales before creating our product concordance, or model-match groupings. Section 771(16) of the Tariff Act defines such or similar merchandise and provides a hierarchy of preferences for determining which merchandise sold in the foreign market is most similar to the merchandise sold in the United States. Whether a model is sold in the home market or third countries at prices below cost is not a criterion for determining what is most similar merchandise under the statute. Therefore, we rejected the product concordances proposed by respondents, which eliminated most similar models when those models were sold at prices below cost.

In determining whether third-country sales were made at prices below the cost of production (COP), we compared the sales prices of each model to its COP. Below-cost sales were disregarded on a model-specific basis in accordance with the 10/90/10 rule. If we found that less than 10 percent of the sales of a model were made at less than cost, we included all third-country sales of that model in the calculation of FMV. If between 10 and 90 percent of third-country sales of a specific model were made at less than cost, we disregarded those sales made at less than cost and used the above-cost sales in the price comparisons. If more than 90 percent of third-country sales of a model were made at less than cost we disregarded all sales of that model.

For the preliminary results, where there were more than one equally similar model, in accordance with our model match criteria as set out in Appendix V of our questionnaire, we selected a single most similar model, based on the cost differences between the third-country and U.S. models. That is, we selected the one with the lowest cost difference. If more than 90 percent of the sales of a model chosen as the most similar third-country model were below cost, we used CV as the basis of FMV. For these final results, rather than choose the single most similar model based on cost differences, we used the pool of equally similar models as long as those models were within the 20 percent cost differential. When there was more than one equally similar above-cost model, we adjusted the FMV of each model for differences in merchandise, and then weight averaged the results. If any of these models were found to be below cost, we excluded them from our analysis and used only the above-cost models.

Comment 2: Respondents argue that in calculating COP for the final results, the Department should use the respondents' 1990 selling, general and administrative expenses (SG&A) rather than the 1990–91 average SG&A. They contend that most sales in this review were produced in 1990, and because MMF sweater production and shipments vary from season to season, SG&A for a full fiscal year should be used.

Department's Position: We agree with the respondents that we should use SG&A expense data from full fiscal years to account for seasonality. All the data which were averaged for the preliminary review results were, in fact, full fiscal year data, derived from the companies' annual financial statements. We disagree, however, with respondents' argument that we should rely exclusively on 1990 SG&A. For the final results for Kee Ryung, Suhcheon, Young Woo, and Yurim, whose fiscal years are also the calendar year, the period of review includes an equal number of months from each of the fiscal years and, therefore, we have continued to use a simple average of 1990 and 1991 SG&A. For Chunji, we have continued to add Chunji's SG&A for the fiscal year July 1, 1990 through June 30, 1991, to the average of its related company's SG&A for the fiscal/calendar years 1990 and 1991. Twelve of the 16 review months occurred during the July 1, 1990 through June 30, 1991 period; of the remaining four months, we have data only for the two months in the prior fiscal year, but not for the two months in the subsequent fiscal year. Thus, it is appropriate to only use SG&A expenses from the one fiscal year for Chunji. For Tae Kwang, we used a weighted average SG&A, weighted three-fourths for the fiscal year covering the period September 1, 1990 through August 31, 1991, and one-fourth for the fiscal year covering the period September 1, 1989 through August 31, 1990, since twelve months of the review period occurred in the first fiscal year, and four months occurred in the second.

Comment 3: Respondents state that the Department incorrectly adjusted for the value added tax (VAT), by increasing reported costs such as foreign inland freight, foreign brokerage, containerization, commissions and packing, by 10 percent for both the U.S. and third-country sales. Respondents contend that VATs "paid" on purchases of goods and services are not costs because they are rebated upon payment and thus do not constitute an expense to the company.

They state that the VAT adjustment probably did not affect dumping margins where net U.S. prices were compared to net third-country prices, but it likely resulted in more below-cost sales which, in turn, increased the dumping margin. They state that the Department should recalculate costs and exclude the relevant VATs.

Department's Position: We agree with respondents and have changed our calculations accordingly.

Comment 4: Respondents contend that the Department should not include U.S. and third-country sample sales and resales in its dumping calculations. Resales occurred when a customer cancelled an order, and the

manufacturer found another buyer for the merchandise. They argue that these sales did not occur in the ordinary course of trade and that their inclusion affected the dumping margins. They claim that sample sales and resales are unrepresentative of sales routinely undertaken by Korean companies, and that the inclusion of such sales is patently unfair, as they are not a means of price discrimination, but of promoting sweater sales and disposing of small volumes of cancelled orders.

Respondents argue that the Department has in the past excluded small quantity/high price sales when the transactions in question are "trial sales for evaluation" or "sales of sample merchandise" and are "not for consumption but rather for evaluation purposes." To support this argument they cite Tapered Roller Bearings; Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Antidumping Administrative Review, 57 FR 4951, 4959 (February 11, 1992) (TRBs from Japan), and Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review, 58 FR 50343, 50345 (September 27, 1993) (PTFE from Japan).

Department's Position: It is our established practice not to exclude sample sales or resales in the U.S. market in administrative reviews, and respondents provide no justification for doing so in this case. There is no statutory or regulatory authority for excluding U.S. sales from review. Section 353.46(a) provides for the exclusion of sales made outside the ordinary course of trade from the calculation of FMV; however, no such provision is made for disregarding sales made outside the ordinary course of trade from the calculation of U.S. price. In a less-than-fair-value (LTFV) investigation we have the discretion to eliminate unusual sales from our analysis; in an administrative review, however, the statute and the regulations require that we analyze all U.S. sales, except when sampling techniques are used. (See 19 U.S.C. 1677f-1; 19 C.F.R. 353.59 (1994). See, also, Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, 58 FR 39729, 39776 (July 26, 1993) and Final Results of Antidumping Duty Administrative Review; Portable Electric Typewriters from Japan, 56 FR 14072, 14079 (April 5, 1991).) In PTFE from Japan we noted that, historically, the Department has considered all transactions to be sales whenever ownership transfers to an unrelated party. Due to the peculiar nature of PTFE resin, the consideration of transfer of ownership was inapplicable, because samples of resin, once used in testing, could not be returned in the original form to the seller. In the present case, sample sales made in the United States involved a transfer of ownership between parties, and respondents have not shown the existence of any special circumstances, such as obtained in PTFE from Japan, that would cause us to deviate from our practice. TRBs from Japan, which respondents cite, does not address sample sales and resales in the United States.

We have in the past excluded sales outside the ordinary course of trade only in the home and third-country markets for administrative reviews. In order for us to exclude sales, a firm must provide substantial evidence that such sales are outside the ordinary course of trade. (See Final Results of Antidumping Duty Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts From France, et al. 57 FR 28360, 28395 (June 24, 1992).) Respondents in this case have not provided convincing evidence that third-country sample sales and resales were outside the ordinary course of trade.

For the final results, we attempted, when possible, to match sample sales in the United States to sample sales in the third country, and resales in the United States to resales in the third country, within the constraints of our model-matching criteria.

Final Results of Review

As a result of our review, we determine that the following margins exist:

Manufacturer/exporter	Period of review	Margin (percent)
Chunji Industrial Company, Ltd. and Sungwha Garment Company, Ltd.	04/27/90–08/31/91	2.55
Kee Ryung Industrial Company, Ltd.	04/27/90–08/31/91	2.17
Suhcheon Company, Ltd.	04/27/90–08/31/91	2.19
Tae Kwang Industrial Company, Ltd.	04/27/90–08/31/91	0.30
Young Woo Industrial Company, Ltd.	04/27/90–08/31/91	4.75
Yurim Industrial Company, Ltd.	04/27/90–08/31/91	2.16
Bangil Industrial, Ltd.	04/27/90–08/31/91	12.35
Boun Kyung Corporation	04/27/90–08/31/91	12.35
Bum-Yang Apparel Company, Ltd.	04/27/90–08/31/91	12.35
Chai-Knit Trading Company, Ltd.	04/27/90–08/31/91	12.35
Chang Jae Corporation	04/27/90–08/31/91	12.35
Chongju Textiles Company, Ltd.	04/27/90–08/31/91	12.35
Dae Kyung Company, Ltd.	04/27/90–08/31/91	12.35
Daewoo Corporation	04/27/90–08/31/91	12.35
Dae Yu Company, Ltd.	04/27/90–08/31/91	12.35
Do Sung Textile Company, Ltd.	04/27/90–08/31/91	12.35
Dong Kwang Corporation	04/27/90–08/31/91	12.35
Dong Woo Company, Ltd.	04/27/90–08/31/91	12.35
Doosung Textile Company, Ltd.	04/27/90–08/31/91	12.35
Full Bright Industrial Co., Ltd.	04/27/90–08/31/91	12.35
Hae Yang Knitting Factory, Ltd.	04/27/90–08/31/91	12.35
Hanil Synthetic Fiber Ind. Co., Ltd.	04/27/90–08/31/91	12.35
Hwa Man Industrial Company, Ltd.	04/27/90–08/31/91	12.35
Jo Woo Company, Ltd.	04/27/90–08/31/91	12.35
Kolon International Corporation	04/27/90–08/31/91	12.35
Kuk Rim Ltd.	04/27/90–08/31/91	12.35
Kun Ja Industrial Company, Ltd.	04/27/90–08/31/91	12.35
Ryu Kyung Industrial Company, Ltd.	04/27/90–08/31/91	12.35

Manufacturer/exporter	Period of review	Margin (percent)
Samdo Trading Company and Daishin Trading Company, Ltd.	04/27/90–08/31/91	[1] 2.35
Samjin Moolsan Ltd.	04/27/90–08/31/91	[1] 2.35
Samsung Company, Ltd.	04/27/90–08/31/91	[1] 2.35
Se Dong Company, Ltd.	04/27/90–08/31/91	[1] 2.35
Shin Chang Knitting Company, Ltd.	04/27/90–08/31/91	[1] 2.35
Shinwon Corporation	04/27/90–08/31/91	[1] 2.35
Sunny Apparel, Inc.	04/27/90–08/31/91	[1] 2.35
Uksung Company, Ltd.	04/27/90–08/31/91	[1] 2.35
Wha Jin Apparel Company, Ltd.	04/27/90–08/31/91	[1] 2.35
Yakjin Trading Corporation	04/27/90–08/31/91	[1] 2.35
Baik Yang Company, Ltd.	04/27/90–08/31/91	[2] 1.30
Choongbang Company, Ltd.	04/27/90–08/31/91	[2] 1.30
Dongwoo Silk Company, Ltd.	04/27/90–08/31/91	[2] 1.30
Doosan Industrial Company, Ltd.	04/27/90–08/31/91	[2] 1.30
Hanjoo Corporation	04/27/90–08/31/91	[2] 1.30
Hoejun Knit Goods Company, Ltd.	04/27/90–08/31/91	[2] 1.30
Jung Woo Textile Company, Ltd.	04/27/90–08/31/91	[2] 1.30
San Han Synthetic Fiber Co., Ltd.	04/27/90–08/31/91	[2] 1.30
Cheon Woo Express	04/27/90–08/31/91	[3] 1.30
Chin Ji Industrial	04/27/90–08/31/91	[3] 1.30
Daelim	04/27/90–08/31/91	[3] 1.30
Goo San Trading	04/27/90–08/31/91	[3] 1.30
Hanjoo Shipping International	04/27/90–08/31/91	[3] 1.30
Hanlim	04/27/90–08/31/91	[3] 1.30
Hyop Sung	04/27/90–08/31/91	[3] 1.30
Hyop Woon Enterprises	04/27/90–08/31/91	[3] 1.30
Jung Wong	04/27/90–08/31/91	[3] 1.30
Kook Industries	04/27/90–08/31/91	[3] 1.30
Ryu Kyung	04/27/90–08/31/91	[3] 1.30
Sam Jin Industries	04/27/90–08/31/91	[3] 1.30
Sam Jing Industries	04/27/90–08/31/91	[3] 1.30
Shen Heung Textile	04/27/90–08/31/91	[3] 1.30
Wahjin	04/27/90–08/31/91	[3] 1.30
Woorin Trading	04/27/90–08/31/91	[3] 1.30
Ye In	04/27/90–08/31/91	[3] 1.30
Yoo Chang Enterprise	04/27/90–08/31/91	[3] 1.30
Yuwon Trading	04/27/90–08/31/91	[3] 1.30
All Others	04/27/90–08/31/91	1.30

[1] Not selected from the sample pool; rate is the simple average of the margins for the six selected companies.
[2] No shipments during the period; rate is the weighted-average margin for each company from the less-than-fair-value investigation, or, if a company was not involved in the investigation, the "All Others" rate.
[3] Not known to Korean Garment and Knitwear Export Association as a shipper; rate is the weighted-average margin for each company from the less-than-fair-value investigation, or, if the company was not involved in the investigation, the "All Others" rate.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of MMF sweaters from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the LTFV investigation; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the LTFV investigation for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate of 1.30 percent established in the final notice of LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, 822 F.Supp 766 (1993), and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, 839 F.Supp 864 (1993). Since the margin for Tae Kwang is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department will instruct customs to collect a cash deposit of zero antidumping duties on entries from Tae Kwang. 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 final 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 subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial

protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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: April 6, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–8909 Filed 04–12–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 040794C]

Gulf of Mexico Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's Texas Habitat Advisory Panel will hold a public meeting on April 27, 1994, from 9:00 a.m. until 3:00 p.m.

The purpose of the meeting is to review and discuss studies related to marsh management, the Trans-Texas Water Plan, Corps of Engineers' Maintenance Dredging Program for the Gulf Intracoastal Waterway, and status of studies related to the Houston-Galveston Ship Channel.

The meeting will be held at the Sheraton Crown Hotel and Conference Center, 15700 John F. Kennedy Boulevard, Houston, TX.

FOR FURTHER INFORMATION CONTACT: Richard J. Hoogland, Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by April 20, 1994.

Dated: April 7, 1994.

David S. Crestin,

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

[FR Doc. 94–8841 Filed 4–12–94; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' meeting scheduled for 21 April 1994 has been cancelled. The next meeting is scheduled for 19 May 1994 at 10 am in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 6 April 1994.

Charles H. Atherton,

Secretary.

[FR Doc. 94–8830 Filed 4–12–94; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF ENERGY

Financial Assistance: State of Idaho, Department of Health and Welfare; Grant

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to renew Grant Number DE–FG07–91ID13134 to the State of Idaho, Department of Health and Welfare. The proposed grant will continue funding the performance of state oversight responsibilities in support of an Interagency Agreement (IAG) under the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) 42 U.S.C. 9601 et seq. The grant will provide the state with the means to perform a substantive role in overseeing DOE's compliance with environmental laws during environmental restoration activities at the Idaho National Engineering Laboratory (INEL). The IAG for the INEL is the Federal Facilities Agreement and Consent Order (FFA/CO) signed December 9, 1991. The Federal Domestic Catalog Number is 81.502.

FOR FURTHER INFORMATION CONTACT: Ginger L. Sandwina, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563, (208) 526–8698.

SUPPLEMENTARY INFORMATION: The statutory authorities for the proposed award are 42 U.S.C. 2011 et seq., Atomic Energy Act of 1954 as amended and Public Law 95–41, Department of Energy Organization Act. The proposed award meets the criteria for "non-competitive" financial assistance as set forth in 10 CFR 600.7(b)(2)(i)(C). The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The grant will cover a five (5) year period and carry the activity through calendar year 1999. The total estimated amount of the grant is $5,000,000 with each year estimated to be approximately $1,000,000. The various environmental activities will continue to be in compliance with the FFA/CO in the future as a result of the agreement.

Issued: April 5, 1994.

David W. Newnam,

Acting Director, Procurement Services Division.

[FR Doc. 94–8899 Filed 4–12–94; 8:45 am]

BILLING CODE 6450–01–M

Award of a Cooperative Agreement, Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Richland Operations Office (RL) announces that pursuant to Public Law 95–224 and section 646 of the Department of Energy Organization Act, it intends to make a discretionary financial assistant award based on the criterion set forth in 10 CFR 600.7(b)(2)(i)(B) to the Yakima Indian Nation (YIN), Toppenish, Washington, under Cooperative Agreement Number DE–FC06–94RL 12914. The primary purpose of the cooperative agreement is the replenishment of chinook salmon in the Columbia River. This one year effort will have a total estimated cost of $170,000, of which $120,000 will be provided by DOE and $50,000 will be provided by YIN.

FOR FURTHER INFORMATION CONTACT: Questions regarding this announcement should be addressed to the U.S. Department of Energy, Richland Operations Office, Procurement Division, Mail Stop A7–80, P.O. Box

550, 825 Jadwin Avenue, Richland, Washington 99352, ATTN: Jo Laughlin, Contract Specialist.

SUPPLEMENTARY INFORMATION: In support of the transformation within the Department of Energy as it redirects its focus from a primarily mission-oriented, inward-facing agency to a service-oriented, customer-driven agency, the Secretary of Energy has implemented plans for supporting economic development and community assistance activities around DOE sites affected by changing program missions. Each Operations Office has been charged with notifying the public of available facilities, technology partnership opportunities and economic development and diversification programs for the purpose of stimulating local economic growth through community partnerships. In addition, as part of the cleanup and restoration mission for the Hanford Site and the nearby Columbia River, plans for replenishing, replacing and enhancing the stock of returning chinook salmon to this area are encouraged. With the closure of all nuclear reactors on the Hanford Site, a number of facilities have become available for use by others. The Yakima Indian Nation is proposing to use water treatment pools located at the site of the former 100 Area K-E reactor for the purpose of rearing and acclimating one-half million upriver bright fall chinook salmon. It is anticipated that some portion of the juvenile fall chinook salmon reared and released as a result of this project will return as adults. These returning adults will contribute to the area economy by increasing the salmon available for tribal, commercial, and sports fishermen. In addition, some of these returning adults will spawn naturally to continue the cycle for future generations. The ultimate goal is to restore the chinook salmon to its historic level in the Columbia River. The Yakima Indian Nation, as co-manager of the Columbia River salmon resources, has coordinated the development of the project with the Washington State Department of Fish and Wildlife, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. The project has also been authorized and endorsed by the 1993–94 Columbia River Production Agreement in which the Yakima Indian Nation was identified as the lead agency for implementing this project.

Dated: April 5, 1994.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 94–8898 Filed 4–12–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Efficiency and Renewable Energy Office

Climate Change Action Plan; Regional Roundtables

AGENCY: Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of roundtables.

SUMMARY: The U.S. DOE is announcing the first two in a series of regional roundtables to solicit comments and feedback from stakeholders, which include state and local officials, utility representatives, industry representatives, public interest groups and other interested parties on the Climate Change Action Plan, the Clinton Administration's blueprint for stabilizing greenhouse gas emissions at 1990 levels by the year 2000.

DATE AND LOCATION: April 26, 1994; International House, 3701 Chestnut Street, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Arlene Anderson or Carol Tombari, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Green Room, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7541.

SUPPLEMENTARY INFORMATION: On October 19, 1993, President Clinton made a national commitment to stabilizing greenhouse gas (GHG) emissions at 1990 levels by the year 2000. The blueprint for achieving this goal is known as the Climate Change Action Plan (CCAP), a volume of 46 emissions-reducing "actions" the U.S. will take during the remainder of the decade. The Plan is founded on the principle that cost-effective energy efficiency programs provide energy cost reductions that more than offset the investment to increase efficiency. The CCAP focuses on and accelerates the implementation of the Energy Policy Act of 1992. As a result, the overall Plan is estimated to require no net increase in Federal funding as it creates jobs, reduces home and business energy bills, and induces over $60 billion in new domestic investment.

The Department of Energy's (DOE's) Office of Energy Efficiency and Renewable Energy has the responsibility for implementing the renewable energy and energy efficiency actions in the President's plan. An executive summary of the Plan may be obtained by calling DOE, (202) 586–7541. Several other Federal agencies and offices have important implementation responsibilities for the remaining actions and for other aspects of the Plan.

DOE's Office of Energy Efficiency and Renewable Energy and the National Association of State Energy Officials will conduct regional roundtables to solicit comments and feedback on the Climate Change Action Plan. The purpose of the roundtables is to describe and solicit feedback on DOE's preliminary proposals to implement its actions under the Plan. Rather than design individual implementation plans, however, DOE has examined its implementation responsibilities from the standpoint of comprehensiveness, integration, and leverage. As a result, DOE has developed an implementation approach that has the potential to integrate all CCAP activities, not only into DOE's programs, but also into other energy efficiency activities and programs.

Through these roundtables DOE hopes to begin soliciting input from a wide variety of stakeholders. The agency seeks feedback on the comprehensive strategy as well as specifics of proposed implementation activities. Comments or questions from the public may be submitted in person or in writing at the roundtable. Following the roundtable, written comments or questions may be sent to the address listed above. For several of the actions, DOE presents several implementation options rather than a single proposed implementation plan. In these instances, DOE seeks input that will help guide our selection of one of these options.

The roundtable format will provide a forum for representatives from state and local governments, utilities, industry, public interest groups and other interested parties to provide comments. The roundtable format is sufficiently flexible to allow participants to offer comments, either on specific actions or on the entire package, through the use of breakout sessions for key groups of actions. All comments will be considered. Facilitators will be provided for each session. A copy of a summary of the roundtable proceedings may be obtained by calling or writing to the address listed above.

Proposed Agenda

8 a.m.
Registration.
Welcome and Introduction.
Overview of Climate Change Action Plans.

Break-out Sessions.

- Utilities/Energy Supply.
- Buildings.
- Industry.

12:30 p.m.

Working Lunch.

Break-out Sessions (Cont'd).

Feedback and Closing Comments.

4:15 p.m.

Adjourn.

Detailed information about the roundtables can be obtained from: Carol Tombari or Arlene Anderson (202) 586–7541.

Issued in Washington, DC, on April 7, 1994.

Frank M. Stewart, Jr.,

Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 94–8911 Filed 4–12–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2420–001 Utah]

PacifiCorp Electric Operations; Availability of Environmental Assessment

April 7, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Cutler Project, located on the Bear River in Cache and Box Elder Counties, Utah, near Logan, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that issuance of a new license for the project, with appropriate environmental protection and enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8787 Filed 4–12–94; 8:45 am]

BILLING CODE 6717–01–M

Application Tendered for Filing With the Commission

April 7, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* 5–MW Exemption.

b. *Project No.:* 11374–001.

c. *Date Filed:* February 25, 1994.

d. *Applicant:* Butler County, Iowa.

e. *Name of Project:* Greene Milldam.

f. *Location:* On the Shell Rock River, in the Town of Greene, Butler County, Iowa.

g. *Filed Pursuant to:* Energy Security Act of 1980, Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steve Brunsma, 19429 Timber Road, Clarksville, Iowa 50619, (319) 278–4237.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Comment Date:* Within 60 days of the date filed shown in paragraph (c).

k. *Description of Project:* The existing inoperative project would consist of: (1) A 290-foot-long, 11-foot-high concrete dam; (2) a reservoir having an 85-acre surface area and a 385-acre-foot storage capacity at normal water surface elevation 946 feet MSL; (3) a powerhouse containing one 150–kW generating unit and one 250–kW generating unit for a total installed capacity of 400–kW operated at a 10.6-foot head; (4) a short 13.8–kV transmission line; and (5) appurtenant facilities. The dam is owned by Butler County, Iowa. Applicant estimates that the average annual generation would be 1,280 MWH. Power would be sold to Interstate Power Company. The Application was filed during the term of applicant's preliminary permit.

l. Within this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at section 800.4.

m. Pursuant to § 4.31(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8786 Filed 4–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–316–000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

April 5, 1994.

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

1. Northwest Pipeline Corp.

[Docket No. CP94–316–000]

Take notice that on March 30, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94–316–000 a request pursuant to §§ 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to replace certain metering facilities at its Wenatchee Meter Station (Wenatchee Station) in Chelan County, Washington to maintain the ability to accommodate its existing firm maximum daily delivery obligations (MDDO) to Cascade Natural Gas Corporation (Cascade), under Northwest's blanket certificate issued in Docket No. CP82–433–000 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.

Northwest states that its Wenatchee Station has a maximum design delivery capacity of approximately 19,334 Dt/d (at 225 psig) from Northwest's Wenatchee Lateral into Cascade's distribution system. Northwest further states that it is presently contractually obligated to deliver up to 12,214 Dt per day to Cascade at the Wenatchee delivery point, (8,740 Dt/d of transportation which is provided under a Rate Schedule TF–1 agreement pursuant to Subpart G of Part 284, and 3,474 Dt/d of storage which is provided under a Rate Schedule SGS–1). Northwest is specifically proposing to replace four obsolete regulators (two 4 inch regulators and two 2 inch regulators), with two new 2 inch regulators. Northwest avers that replacing the four obsolete regulators with the two new 2 inch regulators will decrease the maximum design capacity of the Wenatchee Station from 19,334 Dt/d to approximately 12,367 Dt/d at a pressure of 225 psig. It is stated that the smaller design capacity still will be

adequate to deliver the current MDDO of 12,214 Dt/d at the Wenatchee point. It is further stated that during the past four years, the actual peak day deliveries have not exceeded the proposed design capacity of this delivery point.

Northwest states that the total cost of replacing the described facilities at the Wenatchee Station is estimated to be approximately $13,325, including the cost of removing the old facilities. It is stated that since the proposed facility upgrade is necessary to replace obsolete equipment, Northwest will not require any cost reimbursement from Cascade.

Comment date: May 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline LNG Co.

[Docket No. CP87–418–003]

Take notice that on March 29, 1994, Trunkline LNG Company (TLC), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP87–418–003 an application pursuant to section 7(c) of the Natural Gas Act and the Commission's regulations thereunder for a certificate amendment and clarification of the applicable tariff provisions to the existing authorization wherein TLC provides liquefied natural gas (LNG) terminal service to Pan National Gas Sales, Inc. (Pan National). TLC is not requesting a change in the shipping cost currently included in the Cost of service calculation specifically designed for shipment of Algerian LNG to TLC. TLC is requesting authorization to utilize a shipping cost of $27,937 per day plus actual port costs for affiliated shipping of non-Algerian LNG or the actual shipping cost, when using non-affiliated shipping. TLC also requests clarification that TLC is authorized to provide terminal service to Pan National, regardless of the origin of the LNG, or in the alternative, the necessary amendment to allow such transactions.

Comment date: April 26, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP94–321–000]

Take notice that on March 31, 1994, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–321–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to modify its operations at an existing meter station in Jefferson Parish, Louisiana required to implement an interruptible transportation service for Natural Gas Clearinghouse, under the blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to modify an existing receiving station in order to deliver gas to Wichita River Oil Corporation (Wichita) for use as gas lift gas at its production facilities in Jefferson Parish Louisiana. Southern plans to modify the meter station on its 4-inch Three Bayou Bay Line in Jefferson Parish, Louisiana, by reversing the existing 2-inch meter to enable Southern to deliver gas to Wichita at that location. Southern estimates that the cost of modifying the meter station is approximately $10,100 for which Wichita has agreed to reimburse Southern.

Southern states that it will transport gas to Wichita pursuant to the existing service agreement between Southern and Natural Gas Clearinghouse under Southern's rate schedule IT. Natural Gas Clearinghouse has requested transportation of the gas for delivery at the meter station by having the meter station added as a delivery point to the service agreement under Southern's tariff. Southern further states that Wichita anticipates receiving on average 200 Mcf of natural gas per day and 4,000 Mcf per year at the proposed facilities. Southern states that the operation of the proposed facilities will have no significant effect on its peak day or annual requirements.

Comment date: May 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

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

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

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

Lois D. Cashell,

Secretary.

[FR Doc. 94–8828 Filed 4–12–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–322–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

April 7, 1994.

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

1. Natural Gas Pipeline Company of America

[Docket No. CP94–322–000]

Take notice that on March 31, 1994, Natural Gas Pipeline Company of

America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP94–322–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, effective January 27, 1994, a firm transportation service for Texas Eastern Transmission Corporation (Texas Eastern), which was authorized in Docket No. CP76–278, as amended, all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural proposes to abandon, effective January 27, 1994, the firm transportation service of up to a maximum of 47,000 Mcf of natural gas per day provided by Natural for Texas Eastern under the terms of a transportation agreement dated January 28, 1976 (Agreement), as amended, and Natural's Rate Schedule X–63 authorized in Docket No. CP76–278, as amended. It is stated that Texas Eastern requested in a letter to Natural dated May 14, 1993, that Natural abandon, effective January 27, 1994, the Agreement, as amended, and Natural's Rate Schedule X–63 firm transportation service. It is further stated that Texas Eastern is the sole recipient or customer of the transportation service that is proposed to be abandoned herein.

Comment date: April 28, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Mississippi River Transmission Corp.

[Docket No. CP94–323–000]

Take notice that on March 31, 1994, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri, 63124, filed in Docket No. CP94–323–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two natural gas transportation and sales services which were authorized in Docket Nos. CP77–30 and CP79–457, all as more fully set forth in the application on file with the Commission and open to public inspection.

MRT proposes to abandon the following certificated services: (1) Rate Schedule X–15, a transportation and sale agreement with Panhandle Eastern Pipeline Company and Trunkline Gas Company, and (2) Rate Schedule X–21, a transportation and purchase agreement with KN Energy, Inc., formerly Kansas-Nebraska Natural Gas Company, Inc. MRT indicates that all of the parties referenced above have agreed to the termination of the subject services, and have already received Commission authorization to abandon their obligations under the agreements.

MRT states that no facilities will be abandoned as a result of the instant proposal. MRT further states that it will continue to operate all of the related facilities to the extent necessary to provide part 284 transportation service.

Comment date: April 28, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP94–325–000]

Take notice that on March 31, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, through its agent, Transco Gas Marketing Company (TGMC)[1] filed in Docket No. CP94–325–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain firm sales services provided to Consolidated Edison Company of New York, Inc. (Con Ed), Long Island Lighting Company (LILCO), and Philadelphia Gas Works (PGW), (collectively Buyers), under TGPL's Rate Schedule FS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, pursuant to the elections of Buyers' under their respective FS Agreements to terminate the agreements, TGPL seeks authorization to abandon the three FS Agreements between itself, Con Ed, LILCO and PGW and requests that such abandonment be made effective March 31, 1995.

TGPL states that Paragraph 2 of Article II of the FS Agreements provides that at the end of the primary term, and on each anniversary date thereafter, the term of the service agreement will be extended by successive one contract year periods unless either party notifies the other in writing not less than two contract years prior to the end of the primary term or two contract years prior to any anniversary date thereafter, as the case may be, of its election not to extend the term of the service agreement.

TGPL states that the primary term of the FS Agreements between itself and Con Ed and PGW ends March 31, 1995. TGPL further states that the primary term of the FS Agreement with LILCO ended March 31, 1994, but its term was extended for one contract year in accordance with Paragraph 2 of Article II of the FS Agreement. By letter dated March 30, 1993, and letters dated March 31, 1993, PGW, Con Ed and LILCO, respectively, notified TGPL that they elected to terminate these FS Agreements effective March 31, 1995, in accordance with Paragraph 2 of Article II of the FS Agreement.

Comment date: April 28, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Williams Natural Gas Co.

[Docket No. CP94–333–000]

Take notice that on April 5, 1994, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–333–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a small pipeline lateral 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 proposes to abandon in place approximately 730 feet of 4-inch pipeline located downstream of the McLouth, Kansas townborder in Jefferson County, Kansas. WNG explains that the City of McLouth is constructing a new distribution line which will connect to the WNG McLouth townborder and replace the WNG pipeline, and therefore there will be no abandonment of service.

Comment date: May 23, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

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

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will

[1] As approved by the Commission order issued January 19, 1993, TGPL appointed TGMC as its exclusive agent for gas marketing activities. (62 FERC ¶61,045 [1993]).

be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

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

Lois D. Cashell,

Secretary.

[FR Doc. 94–8825 Filed 4–12–94; 8:45 am]

BILLING CODE 6717–01–P

Privacy Act of 1974; New System of Records

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of existence and character of new system of records.

SUMMARY: The Federal Energy Regulatory Commission ("Commission" or "FERC"), under the requirements of the Privacy Act of 1974, 5 U.S.C. 552a (1988 & Supp. 1992), is publishing a description of a new system of records.

DATES: Comments may be filed on or before June 13, 1994.

ADDRESSES: Comments should be directed to the following address: Julia L. White, Privacy Act Officer, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Room 8002, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Elizabeth H. Arnold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 8002, Washington, DC 20426; 202–208–0457.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a (1988 & Supp. 1992), requires that each agency publish a notice of the existence and character of each new or altered "system of records." 5 U.S.C. 552a(a)(5). This Notice identifies and describes the Commission's new system of records. There are no altered systems of records to report. A copy of this report has been distributed to the Speaker of the House of Representatives and the President of the Senate, as the Act requires.

The new system of records does not duplicate any existing agency systems. In accordance with 5 U.S.C. 552a(e)(4), the Commission lists below the following information about this system: Name; location; categories of individuals on whom the records are maintained; categories of records in the system; authority for maintenance of the system; each routine use; the policies and practices governing storage, retrievability, access controls, retention, and disposal; the title and business address of the agency official responsible for the system of records; procedures for notification, access and contesting the records of each system; and the sources of the records in the system.

Dated: April 7, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

FERC–35

SYSTEM NAME:

Security Investigation Tracking System FERC–35.

SYSTEM LOCATION:

Division of Logistics Management, Office of the Executive Director, 825 North Capitol Street, NE., Room 3317, Washington, DC. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former employees of the Commission on board as of January 1992. All current and former ADP support services contractor employees on site since January 1992. All current and former day care provider employees on site since January 1992.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF 85, SF 85P, or SF 86, or other form completed in the course of an investigation for employment at another federal government agency; SF 171; transmittal correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 2302(b)(2)(B), 2302(b)(10), 7311, 7313; Executive Order 10450; 5 CFR 731.103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Data in the system may be used in disclosing information:

- To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency.
- To intelligence agencies for use in intelligence activities.
- To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.
- To a Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation.
- To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.
- To a congressional office in response to an inquiry made at the request of that individual.
- In litigation before a court or in an administrative proceeding being conducted by a Federal agency.
- To the National Archives and Records Administration for records management inspections.
- To the Office of Management and Budget in connection with private relief legislation.
- To respond to a request for discovery or for appearance of a witness.
- To the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, in connection with functions vested in those agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper and computer disk.

RETRIEVABILITY:

By employee's name, social security number, date of birth, and place of birth.

SAFEGUARDS:

Computer disks requires two levels of passwords to gain access. They are stored in a locked cabinet when not in use. Paper records are stored in security containers with combination locks and secured in a room with a deadbolt lock.

RETENTION AND DISPOSAL:

Forms are maintained in an active file as long as employment continues at FERC; thereafter, data are moved to an inactive file. After three to five years in the inactive file, paper records are destroyed by use of a shredder. Computerized data are maintained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Security and Safety Officer, Division of Logistics Management, Office of the Executive Director, 825 North Capitol Street NE., Room 3317–A, Washington, DC 20426.

NOTIFICATION PROCEDURES:

All requests to determine whether this system contains a record pertaining to a requesting individual should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Direct requests to the System Manager. Access permitted only after approval from the Office of Personnel Management, in accordance with that agency's regulations.

CONTESTING RECORD PROCEDURES:

Direct requests to the System Manager. Involvement by the Office of Personnel Management may be necessary, as provided in the Federal Personnel Manual, Chapter 731.

RECORD SOURCE CATEGORIES:

The subject employee, the employee's references and former employers, and the investigator reviewing the employee's form.

[FR Doc. 94–8826 Filed 4–12–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM94–5–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in FERC Gas Tariff

April 7, 1994.

Take notice that on April 4, 1994, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 24, containing changes in rates for effectiveness on January 1, 1994.

According to Granite State, the revised rates on First Revised Sheet No. 24 are applicable to its Rate Schedule LMS (Load Management Service) which provides for swings in excess of the daily variance tolerances above or below scheduled nominations for deliveries to its firm transportation customers under its Rate Schedule FT–NN. It is further stated that Granite State's Rate Schedule LMS service relies on a parallel daily swing service provided by Tennessee Gas Pipeline Company (Tennessee) under its Rate Schedule LMS–MA. Granite State further states that the rates for its Rate Schedule LMS service are identical with and track the rates for Tennessee's underlying service. According to Granite State, the revised rates on First Revised Sheet No. 24 track a reduction in Tennessee's rates for its Rate Schedule LMS–MA service which became effective for billing purposes on January 1, 1994.

According to Granite State, copies of its filing were served on its Rate Schedule LMS customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8785 Filed 4–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–94–203–000]

Tennessee Gas Pipeline Co.; Notice of Cashout Report

April 7, 1994.

Take notice that on April 1, 1994, Tennessee Gas Pipeline Company (Tennessee) pursuant to Section 7 of Article III of the General Terms and Conditions of Fourth Revised Volume No. 1 of FERC Gas Tariff, and in conjunction with the reconciliation of Tennessee's Transition Gas Inventory Charge under Article XXXII of the General Terms and Conditions, tendered for filing a report of the costs and revenues experienced under its cashout mechanism for resolving monthly imbalances during the period July 1992 through August 1993.

Tennessee states that because its cashout costs exceeded its revenues during the applicable period, it owes no refunds of the penalty revenues collected.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8788 Filed 4–12–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 94–07–NG]

Brooklyn Navy Yard Cogeneration Partners, L.P.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Brooklyn Navy Yard Cogeneration Partners, L.P. authorization to import up to 25,000 MMBtu per day of natural gas

from Canada over a 15-year term beginning on November 1, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 28, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–8900 Filed 4–12–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 94–18–NG]

Washington Energy Gas Marketing Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Washington Energy Gas Marketing Company authorization to import up to a combined total of 80 billion cubic feet of natural gas from Canada and Mexico over a two-year term beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 24, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–8901 Filed 4–12–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4862–9]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractors Science Applications International Corporation and TechLaw, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice: Request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractors, Science Applications International Corporation (hereinafter "SAIC") of San Diego, California, and TechLaw, Inc. (hereinafter "TechLaw") of Lakewood, Colorado, cost recovery support documentation for the Superfund sites: (See Attachment). This disclosure includes Confidential Business Information ("CBI") which has been submitted to EPA Region 10, Hazardous Waste Division, Program Management Branch. SAIC's principal office is located at 10260 Campus Point Drive, San Diego, California 92121; TechLaw's office is located at 12600 West Colfax Avenue, Suite C310, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Davidson, Program Management Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1088.

NOTICE OF REQUIRED DETERMINATIONS, CONTRACT PROVISIONS AND OPPORTUNITY TO COMMENT: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into ESS contract No. 68–W4–0014 with SAIC, and CEAT contract No. 68–W0–0001 with TechLaw, for management of these records. EPA Region 10 has determined that disclosure of CBI to SAIC and TechLaw employees is necessary in order that they may carry out the work requested under those contracts with EPA. The contracts comply with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). EPA Region 10 will require that each SAIC and TechLaw employee working on cost recovery work sign a written agreement that he or she:

(1) Will use the information only for the purpose of carrying out the work required by the contract,

(2) Shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and

(3) Shall return to EPA all copies of the information and any abstracts or extracts therefrom, (a) upon completion of the contracts, (b) upon request of the EPA, or (c) whenever the information is no longer required by SAIC and TechLaw for performance of work requested under those contracts. These non-disclosure statements shall be maintained on file with the EPA Region 10 Project Officer for SAIC, and the EPA Region 10 Project Contact for TechLaw. SAIC and TechLaw employees will be provided technical direction from their respective EPA contract management staff.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) and 40 CFR 2.310(h). Comments should be sent to Environmental Protection Agency, Region 10, Sharon Eng, Mail Stop HW–113, 1200 6th Avenue, Seattle, Washington 98101.

Gerald A. Emison,

Acting Regional Administrator.

Alaska

Alaska Battery Enterprises
Arctic Surplus
Standard Steel

Idaho

Blackbird Mine
Bunker Hill Mining and Metallurg
Eastern Michaud Flats Contamin.
Garden City Groundwater
Kerr-McGee Chemical (Soda Springs)
Monsanto Chemical (Soda Springs)
Pacific Hide and Fur Recycling Co.
Southeast Idaho Slag
Triumph Mine Tailings Piles
Union Pacific Railroad Co.

Oregon

Allied Plating, Inc.
East Multnomah County Groundwater
Environmental Pacific
Erickson's Hardwood
Gould, Inc.
Joseph Forest Products
Martin-Marietta Aluminum Co.
McCormick and Baxter
Northwest Pipe and Casing
Paris Woolen Mill
Teledyne Wah Chang
Union Pacific RR Tie Treatment
United Chrome Products, Inc.

Washington

ALCOA (Vancouver Smelter)
American Crossarm and Conduit Co.
American Lake Gardens
Centralia Municipal Landfill
Colbert Landfill
Com. Bay, Near Shore/Tide Flats
Com. Bay, South Tacoma Channel
Cumberland Capacitors
Deaconess Hospital
Drexler-Ramcor
FMC Corp. (Yakima Pit)
Frontier Hard Chrome, Inc.

General Electric (Spokane Shop)
Greenacres Landfill
Harbor Island
Hidden Valley Landfill (Thun. Field)
Kaiser Aluminum Mead Works
Lakewood Site
Maple Valley Capacitors
Mica Landfill
Midway Landfill
Moses Lake Wellfield Contamination
North Market Street (AKA TOSCO)
Northside Landfill
Northwest Transformer
Northwest Transformer (S Harkness)
Old Inland Pit
Pacific Car and Foundry Co.
Pacific Sound Resources
Pasco Sanitary Landfill
Pesticide Lab (Yakima)
Queen City Farms
Seattle Mun. Landfill (Kent Hghlnds)
Silver Mountain Mine
Spokane Junkyard and Assoc. Prop.
Strandley-Manning
Toppenish Onion Field
Tulalip Landfill
Vancouver Water Station #1 Cont.
Vancouver Water Station #4 Cont.
West Valley Highway
Western Processing Co., Inc.
Woods Industries
Wyckoff Co./Eagle Harbor
Wyckoff-East Harbor
Wyckoff-West Harbor
Wyckoff Fac.-Bainbridge
Yakima Plating Co.

[FR Doc. 94–8872 Filed 4–12–94; 8:45 am]
BILLING CODE 6560–50–P

[FRL–4862–6]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Citizens Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Citizens Advisory Committee will hold a meeting at the Clarion Hotel, 1500 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Citizens Advisory Committee of the Gulf of Mexico Program will be held on May 6, 1994, at the Clarion Hotel, 1500 Canal Street, New Orleans, LA. The committee will meet from 8:30 a.m. to 5 p.m. on May 6th. Agenda items will include: Summary Reports of Issue Committee Meetings; Comparison Discussion of Chesapeake Bay and Great Lakes Programs and their relationship to the Gulf Program; Legislative Update; State Activity Reports; 1995 Symposium Update; Status Reports on CAC's 1994 Objectives and Key Projects; and Mid-year/Mid-course Adjustments. The meeting is open to the public.

Douglas A. Lipka,
Acting Director, Gulf of Mexico Program.

[FR Doc. 94–8869 Filed 4–12–94; 8:45 am]
BILLING CODE 6560–50–M

[FRL–4862–3]

National Environmental Justice Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public meeting.

SUMMARY: As required by the Federal Advisory Committee Act (FACA), we are giving notice of the first National Environmental Justice Advisory Council (NEJAC) meeting. This meeting is open to the public.

The purpose of the meeting is to introduce EPA's objectives and goals to the Council and to lay the foundation for the Council's future work. Among the issues that will be presented in this meeting are: the viewpoints and expertise of the members of the Council, the history and background of environmental justice, EPA's environmental justice draft strategic action document, the President's environmental justice executive order, and administrative information regarding the Federal Advisory Committee Act. Because this is the first meeting of the Council, EPA expects that this meeting will focus on the Council's advisory role.

DATES: May 20, 1994.

LOCATION: The meeting will be held at the OMNI SHOREHAM, 2500 Calvert Street NW., Washington, DC 20008, (202) 234–0700.

FOR FURTHER INFORMATION CONTACT: Copies of the NEJAC Charter are available upon request. Anyone wishing to make a presentation must contact Mustafa Ali, Office of Environmental Justice (3103), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 1–800–962–6215 by May 13, 1994.

For hearing impaired individuals or non-English speaking attendees wishing to make arrangements for a sign language or foreign language interpreter, please call or fax Kathy Ackley at 703–934–3293 or 703–934–9740 (fax).

Dated: April 7, 1994.

Robert Knox,
Acting Director, Office of Environmental Justice.

[FR Doc. 94–8870 Filed 4–12–94; 8:45 am]
BILLING CODE 6560–50–M

[FRL–4862–8]

Missouri; Final Program Determination of Full Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Missouri's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve State/Tribal landfill permit programs. EPA intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these determinations will be made based on the statutory authorities and requirements. In addition, State/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258. To the extent the State/Tribal permit program allows such flexibility, 40 CFR part 258 will apply to all permitted and unpermitted MSWLF facilities.

Missouri applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Missouri's

application and proposed a determination that Missouri's MSWLF permit program is adequate to ensure compliance with 40 CFR part 258. After consideration of all comments received, EPA is today issuing a final determination that Missouri's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Missouri shall be effective on April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Althea M. Moses, 726 Minnesota Avenue, Mail Code: WSTM/RCRA/STPG, Kansas City, Kansas, 64105; telephone: (913) 551–7649.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permit or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to 40 CFR part 258. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for the evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Missouri

On September 17, 1993, Missouri submitted an application for adequacy determination for Missouri's municipal solid waste landfill permit program. On November 19, 1993, EPA published a tentative determination of adequacy for all portions of Missouri's program. Further background on the tentative determination of adequacy appears at 58 FR 61090 (November 19, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held on January 4, 1994. Additionally, Missouri Department of Natural Resources (MDNR), Solid Waste Program provided a public availability session immediately following that public hearing to discuss issues relating to specific sites and enforcement actions.

The EPA received the following comments on its tentative determination of full program adequacy for Missouri's MSWLF permit program. Several comments not directly relating to the program adequacy tentative determination, e.g., those relating to a specific facility and enforcement action by MDNR, were deferred to MDNR's public availability session that followed the public hearing. EPA's response to the comments relating to the tentative determination follows each comment below:

One commenter asked if the STIR had been finalized.

EPA response: EPA is in the process of proposing a State/Tribal Implementation Rule that will provide procedures by which the EPA will approve, or partially approve, State/Tribal landfill permit programs. The STIR is currently used as a guidance document by states, tribes and the EPA regions in interpreting and complying with the requirements of 40 CFR part 258.

One commenter asked how changes in the federal regulations will impact an approved state.

EPA response: The states will be provided a mechanism and time frames for upgrading their programs to comply with federal regulations.

Another commenter asked how changes in an approved state's regulations will impact the state's approval.

EPA response: A state that changes its regulations and becomes more stringent is required under the Memorandum or Agreement that is part of the application, to keep EPA's regional office informed. A state that enacts less stringent requirements may endanger its approval or partial approval.

One commenter asked if EPA provides funding to the state under subtitle D.

EPA response: EPA provides funding for certain training and demonstration grants. However, these funds may not be expended for staff salaries or costs to operate the state agency's basic permit program.

One commenter asserted that the state has traditionally been responsive to the environmental needs under the regulations and has been in the forefront as far as staying in step with technology. For example, liquids and hazardous wastes were banned from Missouri solid waste landfills before it became a federal requirement and therefore the contaminant levels in leachate produced by Missouri landfills are less than in other states.

EPA response: EPA is aware that Missouri imposed this requirement before it was required by the federal regulations. EPA's approval of MDNR's program is not intended to prevent the state from taking advantage of technological advancements or imposing more stringent requirements.

One commenter asked, with regard to the MDNR inspection and enforcement program, when offenses are committed over and over again for a particular facility why the offender is given repeated chances to comply and not considered an habitual violator.

EPA response: EPA deferred this response to the MDNR staff at the hearing, who stated that under the state of Missouri's rules a landfill operator must have some sort of formal enforcement action, e.g., abatement order or court order, taken against it before they would be classified an habitual violator. Additionally, EPA responded that the application by the state described the requisite elements of an inspection and compliance program that are required for state program approval.

One commenter asked what sort of activity warrants formal enforcement action.

EPA response: EPA deferred this response to MDNR staff who were present at the public hearing, who stated that when an owner/operator has significant ongoing violations which it refuses to address at the site, it is at this

point that formal enforcement action begins.

One commenter asked what is industrial waste under the regulations.

EPA response: As defined in 40 CFR 258.2, Definitions, "Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA." The MDNR definition of solid waste as written in the 1993 revision of RSMo 260.200(25) includes industrial waste. RSMo 260.200(25) states, "'*Solid Waste*', garbage, refuse and other discarded materials including, but not limited to, solid and semisolid waste materials resulting from industrial, commercial, agricultural, governmental, and domestic activities, but does not include hazardous waste as defined in §§ 260.30 to 260.432, recovered materials, overburden, rock, tailings, matte, slag or other waste material resulting from mining milling or smelting;" EPA finds that these definitions as they categorize industrial waste are consistent with each other.

One commenter concerned about the integrity of ground-water testing asked whether EPA requires that ground water testing be done by MDNR or by independent laboratories.

EPA response: The regulations at 40 CFR Part 258.53, Ground-water sampling and analysis requirements, place the responsibility of ground-water sampling on the landfill owner or operator. Samples are generally analyzed by independent laboratories. The landfill owner or operator must place detailed information in the operating record on the sampling and analysis plan. This information must include procedures and techniques for: (1) Sample collection; (2) Sample preservation and shipment; (3) Analytical procedures; (4) Chain of custody; and (5) Quality assurance and quality control. This procedure ensures the integrity of the sampling and analysis process. MDNR requires that landfills either perform their own sampling or contract with a third party to sample all monitoring wells for a list of constituents that includes all the constituents required by the federal rule, plus six additional constituents. The state requirements for sample collection, sample preservation and shipment, analytical procedures, chain of custody and quality assurance/quality control are identical to the federal regulations.

Several comments were received voicing the concerns about MDNR's funding and its ability to operate an effective enforcement program.

EPA response: EPA deferred this response to MDNR staff at the hearing, who stated that they have adequate resources to cover MDNR's responsibilities. MDNR added that no state can have an inspector at a landfill at all times, but that it conducts quarterly inspections and periodic inspections as a result of complaints. EPA responded that MDNR's program is viewed as adequate.

One commenter questioned if 60 mil. thickness was the minimum requirement for the flexible membrane landfill liners and if it was adequate for ground water protection.

EPA response: The regulations at 40 CFR § 258.40 (b) state that "* * * the uppermost component of the composite liner must consist of a minimum 30-mil flexible membrane liner." Also, those regulations state that the "flexible membrane liner components consisting of high density polyethylene (HDPE) shall be at least 60 mil. thick." Appendix E of 40 CFR part 258 states, "Based on EPA's experience with these liner materials, these are the minimum thicknesses necessary to ensure adequate liner performance, including being able to withstand the stress of construction and to ensure that adequate seams can be made."

One commenter asked what MDNR is going to do about enforcing leachate treatment requirements.

EPA response: EPA deferred this response to MDNR staff at the hearing, who stated that MDNR conducts quarterly inspections and periodic inspections as a result of complaints. EPA considers this an adequate enforcement response.

A commenter asked whether the state has a requirement for the number of personnel to work at landfills of a certain size?

EPA response: EPA deferred this response to MDNR staff at the hearing, who stated that Missouri requires that owner/operators of a landfill employ a sufficient number of personnel to ensure that the landfill will be properly operated in accordance with their approved operating plans and will not cause a public nuisance or health hazard. The owner/operator is also required to have at least one certified solid waste technician. These individuals are provided training by MDNR in the proper operation and construction of landfills. The department does not require additional personnel based on the amount of waste received.

A commenter asked what constitutes a random inspection by MDNR.

EPA response: EPA deferred this response to MDNR staff. According to MDNR waste received at a landfill should be inspected by an individual who has been trained to recognize hazardous and polychlorinated biphenyl (PCB) wastes. The loads can be spot-checked, e.g., every third truck. This inspection is a supplement to an inspection of waste by equipment operators at the working face to ensure that hazardous and other prohibited wastes are not deposited at any sanitary landfills.

A commenter asked what are the time frames in which the public should be notified of an application or public hearing.

EPA response: EPA deferred this response to MDNR staff at the hearing, who stated that the public is required to be informed by a governmental body at least 24 hours in advance of a public meeting (section 610.020, RSMo.). The MDNR Solid Waste Management Program (SWMP) attempts to inform the public of impending hearings at least 30 days in advance of any public hearing.

A commenter stated that she would like to know prior to the public hearing what is acceptable in a public hearing on a permit or application. She wanted to be informed prior to the hearing whether there are certain issues which will not be addressed in the public hearing and if there is a certain format in which issues are to be addressed.

EPA response: EPA deferred this response to MDNR staff at the public hearing. They stated that at a public hearing on a permit MDNR is only allowed to consider comments that relate to the technical suitability of a site. The department cannot legally consider adjacent property values, traffic impacts, land use compatibility, or other non-technical considerations. Missouri law is designed to consider these concerns at the local level before receipt of an application by the department. The department allows citizens to comment on any issue related to a landfill permit application. However, because of time constraints of a public hearing, the department tries to focus on comments that the department has the statutory authority to address.

A commenter asked how long the public comment period is on a permit application.

EPA response: EPA deferred this response to MDNR staff present at the public hearing, who stated that there is not a statutory time frame for public comment on a proposed sanitary landfill. The SWMP allows a period of at least 30 days and extending the public comment period through two weeks from the date of the public hearing. However, comments received by the program that have a direct impact

on the technical review of a project are accepted and considered up to the date of a permit decision.

One commenter recommends that there should be some kind of requirement on the distance a landfill may be located from a residence.

EPA response: EPA deferred this response to MDNR staff present at the public hearing, who stated that the department does not have the statutory ability to regulate the distance from a landfill to an adjacent property owner's building. However, there is a requirement that the disposal area of a sanitary landfill cannot be any closer than fifty feet (50') from the boundary of the landfill property. Additionally, the federal regulations do not contain a buffer zone between a disposal area and adjacent residences.

One commenter asked what citizens who are dissatisfied with the operation of a landfill should do.

EPA response: If there are concerns having to do with the operation of the landfill itself, it is appropriate to contact MDNR. EPA added, if the issues involve problems off the site, they are generally outside the jurisdiction of the department. These are issues which fall under the jurisdiction of the local government.

Two commenters at the public hearing, when asked by MDNR staff at the public hearing whether or not they supported approval of Missouri's landfill permit program, stated that because the state is better equipped than EPA to run a well regulated program, they supported approval of MDNR's program. However, the commenters were concerned that MDNR be made aware of problems they saw in its enforcement program, and improving its program.

EPA response: EPA believes that the responses of the MDNR staff at the public hearing, and the fact that MDNR held a public availability session immediately following the hearing, demonstrates MDNR's willingness to improve its enforcement and public involvement obligations under an approved program. Whatever deficiencies may be alleged in enforcement at a particular site, EPA concludes that overall MDNR is committed to enforcement at each permitted facility and to undertake meaningful public involvement in its permitting.

C. Decision

After reviewing the public comments, I conclude that Missouri's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Missouri is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

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

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

William A. Spratlin,

Acting Regional Administrator.

[FR Doc. 94–8873 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180930; FRL 4771–3]

Receipt of Application for Emergency Exemption to use 2,4–D; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Minnesota Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide 2,4–D (EPA Reg. No. 264–2) to control Common waterplantain on up to 20,000 acres of wild rice in Minnesota. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision on whether or not to grant the exemption.

DATES: Comments must be received on or before April 28, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180930," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific

exemption for the use of the herbicide, 2,4–D, available as Weedar 64 (EPA Reg. No. 264–2) from Rhone-Poulenc Ag Company, to control Common waterplantain (waterplantain) which develops a dense leaf canopy in wild rice fields and can, in extreme cases, reduce wild rice yields by more than 90 percent. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, waterplantain is found in nearly all Minnesota fields which have been cropped continuously to wild rice. Established waterplantain grows from old root stocks early in the spring and plants emerge from the water two to three weeks before wild rice. The emergence of waterplantain prior to wild rice negatively impacts the early stages of the rice's development. Knowledgeable experts indicate that it is not unreasonable for fields infested with waterplantain to experience 50 percent yield losses. No herbicides are currently registered for use on wild rice because of a ruling by EPA that disallowed chemicals that are registered for use on "rice" to be used on wild rice because of differences in taxonomy and growing practices of the two crops. Non-chemical control by hand-weeding or mechanical cultivation is not practical due to necessary flooding of wild rice fields.

Under the proposed exemption a maximum of one application could be applied, at a rate of 8.0 fl. oz. of product (0.25 lb. a.i.) per acre. A maximum of 1,375 gal. of product or 5,500 lbs. a.i. could be applied in 1994. Applications would be made between May 1 and July 31, 1994.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for this use of 2,4–D on wild rice in Minnesota have been requested and granted for the past 4 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Minnesota Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: April 1, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–8732 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30000/48E; FRL–4770–2]

Granular Carbofuran; Proposed Decision to Deny FMC Corp's Request for Reinstatement of the Corn and Sorghum Uses; Proposed Decision to Grant an Extension of the Phase-Out Period for Use on Rice; Call for Reduced Risk Alternatives to Control Rice Water Weevil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: FMC Corporation and grower groups have requested reinstatement of the corn and sorghum uses, and extension of the phase-out period for the rice use of granular carbofuran. These three uses of granular carbofuran are currently being phased out according to the terms of an Agreement in Principle between FMC Corp. and EPA that concluded the Special Review of granular carbofuran. This notice announces EPA's proposed decision to deny FMC's request for reinstatement of the use of granular carbofuran on corn and sorghum, and to grant FMC's request for an extension to the phase-out period for rice. EPA's proposed decision to extend the rice use is subject to 40 CFR 154.35 because the extension of use might increase avian risk, which was the basis of the Special Review of granular carbofuran. EPA is proposing an extension of the use of granular carbofuran on rice because there are currently no efficacious alternatives available.

In conjunction with the proposed extension of the phase-out period of granular carbofuran on rice, EPA is encouraging the registration of reduced risk alternatives to control rice water weevil. Specifically, EPA is asking pesticide manufacturers who are currently developing data in support of the rice registration or who are giving consideration to pursuing a rice registration in the near future, to inform the Agency of their plans. EPA will provide incentives for manufacturers if they have adequate data to support their claims of reduced risk. EPA is also calling for data on integrated pest management (IPM) strategies and non-chemical control methods for rice water weevil.

DATES: Written comments must be submitted by July 12, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30000/48E] to: OPP Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments identified by document control number (OPP–30000/48E) to: OPP Docket, Rm 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Margaret Rice, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32N4, Crystal Station #1, 2800 Crystal Drive, Arlington, Virginia, (703) 308–8039.

SUPPLEMENTARY INFORMATION:

I. Background

The Special Review of granular carbofuran was initiated in October 1985 (50 FR 41938), based solely on acute risk to avian species. In January, 1989, EPA's Preliminary Determination (54 FR 3744, January 25, 1989) proposed to cancel all uses based on the finding that the risks of granular carbofuran outweighed the benefits of continued use. EPA presented its proposed decision for public comment, to the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP), and to the U. S. Department of Agriculture (USDA). The SAP generally supported EPA's avian risk assessment methodology and the Agency's proposal to cancel all uses where efficacious alternatives were available. USDA provided information related to the use of granular carbofuran that EPA subsequently incorporated into its final benefits assessment. The "Granular Carbofuran Conclusion of Special Review Technical Support Document," available in the OPP Docket, contains EPA's detailed response to the SAP, USDA, and public comments received in response to EPA's Preliminary Determination.

While the Agency was preparing to finalize the proposed cancellation, FMC Corporation, the sole registrant of granular carbofuran, entered into

negotiations with EPA. The result of the negotiations was an Agreement in Principle signed on May 13, 1991, which provided for phasing out 99 percent of the use of granular carbofuran over a 4-year period.

The conclusion of the granular carbofuran Special Review (56 FR 64621, December 11, 1991) was based on amendments to the granular carbofuran registrations, including geographic restrictions, label changes, and phase-out of major uses, submitted to the Agency by FMC that implemented the terms and conditions of the Agreement in Principle. EPA determined that these amendments brought the risks and benefits of granular carbofuran into balance such that the Special Review could be concluded.

The Agreement in Principle provided for the complete phase-out of granular carbofuran use by September 1, 1994, with the exception of five crops where minor amounts are used. Thus, pursuant to the Agreement in Principle, corn and sorghum were deleted from the granular carbofuran labels effective September 1, 1993. FMC has amended its label to delete the rice use effective September 1, 1994. The Agreement provides that beginning September 1, 1994, granular carbofuran will be labeled for use only on the following sites: bananas (in Hawaii only), cucurbits (pumpkins, cucumbers, watermelons, cantaloupes, and squash), dry-harvested cranberries, pine progeny tests, and spinach grown for seed.

No more than a total of 4.5 million pounds of active ingredient (ai) in granular formulation was to have been sold in the United States between September 1, 1991 and August 31, 1994, with an additional limit of no more than 400,000 pounds ai to be sold between September 1, 1993 and August 31, 1994.

Remaining stocks of granular carbofuran in the hands of growers and distributors labeled for use on corn and sorghum may be sold and used until September 1, 1994, i.e., 1 year after the deletions of those uses from the registrations. Similarly, granular carbofuran labeled for use on rice, in the possession of growers and distributors, may be used until September 1, 1995.

FMC submitted label amendments embodying the terms and conditions of the Agreement in Principle. EPA published a notice (56 FR 33286) pursuant to section 6 (f) of FIFRA announcing the schedule for deletion of granular carbofuran uses on July 19, 1991.

The Agreement in Principle stipulated that EPA would provide FMC with the opportunity for a meeting with the Director of the Office of Pesticide Programs regarding the risks and benefits of the corn, sorghum and rice uses of granular carbofuran prior to the effective dates of deletion of those uses from the label. FMC met with EPA on October 6 and 12, 1993, to present information in support of reinstating the corn and sorghum uses and extending the phase-out period of the rice use. All materials submitted by FMC as well as minutes of the October 6th and 12th meetings can be found in the OPP Docket. EPA has reviewed the material presented by FMC and other interested parties related to these three uses as input to this proposed decision.

Granting any of FMC's requests would necessitate modification to the terms and conditions of the granular carbofuran registrations that were agreed upon by EPA and FMC, and that provided the basis for conclusion of the Special Review. Although EPA's proposed decision to deny FMC's request for modification that would allow additional use of granular carbofuran on corn and sorghum does not represent a change to the terms and condition of the registration, EPA is, nonetheless, offering a final opportunity for growers and others affected by the decision to come forward with relevant information.

II. Arguments Put Forth by FMC in Support of Continued Use of Granular Carbofuran on Corn, Sorghum, and Rice

Materials submitted by FMC in support of their request to continue the use of granular carbofuran on corn, sorghum, and rice are available for public viewing in the OPP Public Docket. These materials include minutes of the October 6 and 12 meetings with EPA. In its submissions, FMC contends that, in terms of benefits:

1. Taking into account changes to the 1990 Farm Bill would significantly increase benefits estimates.

2. Annual economic impacts due to the loss of granular carbofuran for corn and sorghum are considerably higher than EPA estimated in the Final Benefits Analyses.

3. The use of granular carbofuran provides indirect benefits of $50 to $100 million per year in hunting and recreational revenue, resulting from waterfowl habitat preservation in rice growing areas.

In terms of risks, FMC contends that:

1. EPA's previous avian risk assessment was inadequate to determine the impact of granular carbofuran on bird populations. FMC submitted a protocol for a study intended to assess the probability of adverse effects from the use of granular carbofuran on populations of local and migratory bird species.

2. No additional kill incidents have occurred since 1991 from granular carbofuran used at planting on corn, sorghum, or rice. Relatively few bird kill incidents have occurred considering the more than 20 years of granular carbofuran use.

3. Cluster analysis would show granular carbofuran relatively low in risk compared to alternatives, if all risk endpoints were considered.

III. Other Public Comments Received After the Conclusion of the Special Review

In addition to the material submitted by FMC, EPA has received and considered information from others affected by the phase-out of granular carbofuran. These comments are summarized below.

In a letter to EPA dated March 10, 1992, the U.S. Fish and Wildlife Service (FWS) supported EPA's decision to phase-out most uses of granular carbofuran, because the phase-out was likely to prevent the deaths of untold numbers of migratory birds in the United States each year. However, FWS also indicated that they believed that there are no conditions under which granular carbofuran can be used without presenting unreasonable risk. The FWS supported full cancellation of all pesticide products containing carbofuran. The FWS letter stated that the continued registration of carbofuran poses conflict with several Federal wildlife statutes including the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and the Endangered Species Act. An attachment to the letter listed additional bird kill incidents, many not previously reported to EPA.

EPA received numerous letters from Senators and Congressmen from corn, sorghum, and rice producing states supporting continued use. EPA received one letter from the National Corn Growers Association in support of continued use on corn.

The National Grain Sorghum Producers submitted a letter with extension bulletins attached, and subsequently met with EPA on September 20, 1993 to outline the importance of several chemicals, including carbofuran, to grain sorghum production.

The U.S. Rice Environmental Committee met with the Agency on June 18, 1992. They subsequently submitted a package to EPA that included: An analysis of potential chemical and non-chemical alternatives for control of rice

water weevil; letters from State agencies, regional and National wildlife organizations attesting to improvement in application procedures and product stewardship to mitigate avian risk and the importance of rice fields as wildlife habitat; and letters from individuals and grower cooperatives attesting to the economic benefits of granular carbofuran use.

Letters from the California Environmental Protection Agency and the California Department of Fish and Game specifically support the U.S. Rice Environmental Committee's position to retain the use of granular carbofuran on rice. Letters from the Louisiana Department of Wildlife and Fisheries, the Mississippi Department of Wildlife, Fisheries and Parks, the Missouri Department of Conservation, and the FWS Wildlife and Habitat Management Office in St. Charles, Arkansas emphasized the importance of rice lands as habitat for migratory waterfowl, but did not state a position on the continued use of granular carbofuran.

It should be noted that during the comment period for the Preliminary Determination, many local, State, and National wildlife organizations wrote in support of EPA's proposal to ban all uses of granular carbofuran. These include the National Wildlife Federation, Defenders of Wildlife, the Rachel Carson Council, the International Crane Foundation, and the Canadian Wildlife Service. The National Audubon Society, favored immediate suspension for all uses except rice. They expressed concern about the possible effect of cancellation on wildlife habitat in California.

EPA received letters from the following State wildlife and resource agencies in support of the Preliminary Determination to cancel granular carbofuran: the Indiana Department of Natural Resources, the Virginia Department of Natural Resources, the Oklahoma Department of Wildlife Conservation, the Florida Game and Fresh Water Fish Commission, the Minnesota State Department of Natural Resources, the Louisiana Wildlife Federation, the Arizona Game and Fish Department, the Montana Department of Fish, Wildlife and Game, the North Carolina Wildlife Resources Commission, the Georgia Department of Natural Resources, the Arizona Game and Fish Department, the Missouri Department of Conservation, and the Kansas Department of Wildlife and Parks.

IV. EPA Response

EPA's detailed response to issues raised by FMC and other commentors is contained in a memo titled, "Analysis and Recommendation RE: FMC's Proposal to Reinstate the Use of Granular Carbofuran on Corn, Sorghum, and Rice." The memo is available in the OPP Docket. With respect to benefits, major points are summarized as follows:

1. Changes in agricultural policy, specifically to crop support programs, have been significant since EPA and others initially evaluated the benefits of granular carbofuran use. However, the higher benefits estimates generated by FMC are primarily attributable to their claim of large yield loss estimates for corn and sorghum. EPA finds insufficient evidence in FMC's submission to support FMC's high yield loss estimates.

2. FMC's economic analyses for corn and sorghum did not consider all available alternatives or all available efficacy data. In both cases, limited regional impacts were presented as national. For the sorghum analysis, FMC used the least effective alternative to calculate potential losses. All of these factors contributed to the higher estimates used by FMC.

3. EPA did not consider indirect benefits from hunting revenue, because these benefits are not unique to carbofuran. FMC's estimate of $50 to $100 million is exaggerated due to their use of several implausible assumptions regarding the use of economic multipliers and the relationship between granular carbofuran treated rice fields and total waterfowl habitat.

With respect to risk, major points are summarized as follows:

1. EPA's risk assessment did not emphasize impacts on bird populations. EPA's concern with granular carbofuran is based on its high acute toxicity to birds, field studies, and incident reports documenting widespread and repeated mortality to many species of birds, including eagles, hawks and other predators. Incidents of both primary and secondary poisonings have been observed and documented in many different geographic areas, associated with many different use sites, and under varying environmental conditions. Legal precedent exists for pesticide regulatory decisions based on recurrent kills as an unreasonable adverse effect (*Ciba-Geigy Corp.* v. *EPA*, 847 F.2d 277, 5th Cir. 1989).

2. FMC has not provided documentation of systematic monitoring of specific use sites to substantiate claims of reduced avian risk and elimination of kill incidents. Only letters of a testimonial nature have been provided. Six additional wildlife kill incidents have been reported to EPA since the conclusion of the Special Review in 1991. Species killed include a bald eagle, Canada geese, and red-tailed hawks.

3. EPA's assessment did address the comparative risk of alternatives in the 1991 Technical Support Document for the conclusion of the Special Review.

V. EPA's Proposed Decision on Corn and Sorghum

EPA finds no basis for reinstating either the corn or sorghum uses in the information provided by FMC and other commentors. EPA disagrees with the assumptions supporting FMC's claims of yield losses higher than those estimated by the Agency. FMC did not consider all available alternatives nor did they include all available efficacy data in their analysis. In its Final Benefits Analysis for Sorghum, EPA found that there are efficacious alternatives available for all corn and sorghum uses, except for a very limited area of Nebraska during high chinchbug infestation years. These findings are based on efficacy tests conducted by universities and state agricultural agencies. Material presented by sorghum growers contained no actual data to substantiate claims of high anticipated yield losses.

No new data or information has been put forth that would substantively change the risk/benefit decision that formed the basis for the Agreement in Principle. Therefore, EPA proposes to deny FMC's request to reinstate the corn and sorghum uses of granular carbofuran.

Pursuant to 40 CFR 154.35, EPA is not required to solicit comment on this decision to deny FMC's request for reinstatement of the corn and sorghum uses, since this decision would not modify the previous Agreement in Principle between FMC and EPA that concluded the Special Review. Because individuals affected by this decision have come forward and indicated that they were unaware that granular carbofuran would no longer be available for use on corn and sorghum in 1994, EPA will consider additional, new, and relevant data submitted to the Agency during the comment period for this notice. EPA is providing this additional comment period even though public comment on the decision to cancel all uses of granular carbofuran has been solicited previously in the Special Review Preliminary Determination (54 FR 3744). EPA responded to comments received at that time in the "Granular Carbofuran Conclusion of the Special Review Technical Support Document" available in the OPP Docket. EPA requests that any additional comments be focused on new and substantive data.

See unit IX, of this notice, for a discussion of the specific data that are most useful to EPA.

VI. EPA Proposed Decision on Rice

EPA is proposing an extension to the current phase-out schedule for granular carbofuran use on rice because there are still no registered alternative chemical controls for rice water weevil, and there are currently no applications in the registration pipeline for this use. The absence of alternatives was a consideration in the decision that concluded the Special Review and continues to be of concern to the Agency.

EPA is also concerned that non-chemical control options, specifically draining fields and eliminating vegetation on field edges (clean farming), may not provide effective control of rice water weevil and may compromise wildlife habitat initiatives that conservation groups have implemented with rice growers. EPA is soliciting additional data on these practices and on other pest control strategies that could reduce use of granular carbofuran while at the same time maintaining or enhancing wildlife habitat in rice growing areas.

EPA is proposing a maximum 2 year extension to the current phase-out schedule for the use of granular carbofuran on rice. The Agency notes that the current phase-out schedule has already allowed substantial time for the development and implementation of alternative control methods, since the issuance of the Preliminary Determination in 1989.

EPA further proposes that any extension of the use of granular carbofuran on rice be subject to the following conditions:

1. Production and sales by FMC will be limited to 250,000 pounds of active ingredient (ai) sold in granular formulations per year for the 1995 and 1996 use seasons for use on rice and the five minor uses stipulated in the Agreement in Principle. FMC must direct 2,500 pounds of the total 250,000 pounds ai to the areas where the five minor use crops are grown during the 1995 and 1996 use seasons. For the purpose of the proposed extension, the 1995 "use season" begins September 1, 1994 and ends August 31, 1995. Similarly, the 1996 use season begins September 1, 1995 and ends August 31, 1996.

2. Existing stocks in the possession of dealers and growers may be used on rice until September 1, 1997.

3. Production and sales by FMC will be limited to 2,500 pounds ai per year for use only on the five sites stipulated in the Agreement in Principle for 1997 and subsequent years.

4. No production and sales by FMC will be allowed for use on rice during the 1996 growing season, however, if a FIFRA section 3 registration for an alternative to control rice water weevil appears imminent at the end of the 1995 growing season. On or before September 1, 1995, EPA will assess the prospect for registration of alternatives to control rice water weevil and advise FMC and other interested parties if production and sales of granular carbofuran for use on rice will be allowed for the 1996 growing season. EPA's assessment of the registration prospect for alternatives will include: The product's efficacy in controlling rice water weevil; the completeness of the data base; and, the Agency's finding that the product presents less risk to the environment and human health than granular carbofuran.

5. For each use season, during any period of extension, FMC must submit to EPA by October 15, a report containing FMC's granular carbofuran production and sales totals for domestic use for the immediately preceding use season. FMC will provide EPA with batch numbers and keys for granular carbofuran product produced for the 1995 and 1996 domestic use seasons to facilitate identification of product by year.

6. FMC may be required to implement label changes or other measures to reduce avian risk during the period of extension. These may include but are not limited to: endangered species bulletins; user education and stewardship programs; and, scouting to determine infestation levels prior to application.

The FWS may issue a new Biological Opinion during the 90–day comment period for this Notice. The Opinion is the result of an ongoing consultation between EPA and FWS regarding the potential of carbofuran to adversely affect endangered species. The Opinion or other comments from the FWS could influence EPA's decision on extending the use of granular carbofuran on rice.

7. All terms and conditions of the May 1991 Agreement in Principle will apply in the case of the extension, except the specific phase-out schedule and production limits for the rice use.

EPA views the proposed extension of the phase-out of granular carbofuran on rice as a transitional measure. The U.S. Rice Environmental Committee has provided documentation of on-going research on both chemical and non-chemical controls for rice water weevil. In addition, the Committee has promoted cooperative efforts between rice growers and environmental organizations to enhance wildlife habitat in rice growing areas. The Agency will make every effort to encourage the registration and use of environmentally sound alternative control measures for rice water weevil. However, growers and others affected by the phase-out of granular carbofuran on rice are advised that EPA has already allowed substantial time for the development and adoption of alternative pest control methods. For this reason, extensions beyond those proposed in this notice are most unlikely. EPA has not changed the basic conclusions outlined in the granular carbofuran Special Review Final Determination, specifically, that the use of granular carbofuran on rice poses unreasonable risk to avian species.

VII. Incentives for Development and Registration of Reduced Risk Alternatives to Control Rice Water Weevil

EPA is committed to reducing risk from pesticide use by eliminating or limiting the use of the most dangerous pesticides, promoting the registration of reduced risk chemical alternatives, and promoting the development and implementation of integrated pest management strategies.

In the case of rice water weevil, EPA notes that many chemicals have been tested and shown promise in controlling this pest. However, no manufacturers have yet pursued registrations for this use. In order to promote registrations of reduced risk alternatives for control of rice water weevil, EPA is soliciting letters indicating interest or intent to register products for this use, from manufacturers of new active ingredients, as well as active ingredients already registered on other sites. The Agency encourages registrants who can demonstrate that their products present less risk to the environment and human health than does the use of granular carbofuran to control rice water weevil to come forward now.

The letters, indicating interest or intent, should provide rationale for claims of reduced risk that are organized and presented according to the "Guidelines for Content of Reduced-Risk Rationales" found in Pesticide Regulation (PR) Notice 93–9. The "Guidelines" contained in PR Notice 93–9, in this instance, are being used for formatting purposes only. It should be noted that PR Notice 93–9 applies only to applicants seeking to register new active ingredients, and should not be confused with the call for safer alternatives for the control of rice water weevil that applies to both new active

ingredients and new uses of active ingredients registered on other sites.

The letters of interest should also indicate when an application could be submitted. If registrants cannot provide a precise schedule, they should give an approximation of when they believe their section 3 application and tolerance requests will be submitted. EPA will treat information supplied by registrants as confidential, if the registrant so requests. Unit X of this notice, outlines procedures for submitting confidential business information.

Respondents need not submit actual registration applications at this time. EPA intends to evaluate the letters/rationales received in response to this notice to determine which ones may qualify for special consideration as reduced risk pesticides. If the rationale provided demonstrates the opportunity for risk reduction, EPA will notify the registrant that the Agency will consider this factor in determining review priority for their registration application for the rice use. However, when registration packages are submitted, they must include all relevant data necessary for EPA to complete a risk assessment and make a regulatory decision.

EPA is willing to consider other incentives that may apply in specific cases, for example, waiving tolerance fees for small businesses seeking registrations for biological pesticides. The Agency encourages registrants to suggest other reasonable incentives that may apply to their case that would stimulate their interest in coming forward sooner rather than later with registrations for the rice use.

EPA recognizes the cost of developing additional data for an aquatic food use such as rice may be a potential barrier to registering reduced risk alternatives. The Agency encourages pesticide user groups, including grower organizations, to consider the option of providing assistance in developing the data required to support registration of alternatives to control rice water weevil. Assistance provided by user groups could range from participation in efficacy, crop residue, and phytotoxicity studies, to direct funding of environmental or human safety studies.

EPA is also interested in data on the effectiveness of biological, cultural and integrated pest control strategies for rice water weevil. Material related to alternatives and incentives should be sent to the contact designated at the beginning of this notice.

VIII. Coordination with USDA

EPA is working with USDA to improve existing procedures to ensure that all affected end users are notified of EPA's proposed pesticide actions and are provided with the opportunity to contribute information relevant to those actions in a timely manner. EPA is also working with USDA to provide information to researchers on pesticides which have triggered environmental or human health concerns, so that this information can be used in identifying needs for research and development of alternatives.

IX. Public Comments

In the course of the Special Review of granular carbofuran, and in Special Reviews in general, EPA has relied on certain categories of data. Data used for Special Review decisions are derived from studies using controlled, scientific methods.

For the benefits assessments these data include: comparative product performance (efficacy) data, particularly data on yield loss and market grade losses; quantitative usage data; data related to the distribution and life cycle of crop pests; and historic data on pest damage and levels of infestation. Comparative product performance data is generated from side-by-side trials of carbofuran and its alternatives. Performance tests compare the ability of products to control a specific pest and some also evaluate the effects on yield.

Data considered in the granular carbofuran Special Review avian risk assessment include: laboratory toxicity data; toxicity and relative risk of alternative pest control measures; field studies; monitoring programs; and poisoning incidents associated with direct and secondary exposure to carbofuran. Field studies and monitoring both require systematic observation by technicians trained to recognize abnormal bird behavior and other evidence of exposure. In order to be scientifically valid, field studies should be conducted according to established protocols for survey methods, searching techniques and timing, and documentation of environmental conditions and application practices. The incident data used by EPA in the granular carbofuran Special Review generally involve laboratory analysis of bird carcasses to determine cause of death.

Commentors are advised that data related to the categories listed above will be most useful to the Agency in reviewing the proposed regulatory decision on granular carbofuran. Letters of a testimonial nature without supporting, scientifically derived data are of limited utility.

The following information would also be useful to the Agency:

1. Letters of intent or interest in registering new or existing chemicals for control of rice water weevil, as described in unit VII of this notice.
2. Data on additional measures that could be adopted to reduce avian risk.
3. Information from growers or organizations with knowledge of effective, non-chemical or IPM strategies for control of rice water weevil.
4. Data on the long-term impacts of population growth and geographic distribution of rice water weevil.
5. Data on the effectiveness of clean farming in controlling rice water weevil, and the schedule of vegetation removal in relation to bird use of rice fields.
6. State agricultural and wildlife agencies are encouraged to comment on methods to further reduce the use of granular carbofuran in rice growing areas through prescriptive use or other measures, and on how to monitor enforcement of label restrictions more effectively.

X. Public Record

EPA has established a public record (OPP–30000/48) for the granular carbofuran Special Review and related actions. The public record includes:

1. This Notice.
2. Materials submitted by the FMC Corporation and others in support of their request to modify the terms and conditions of the granular carbofuran registrations.
3. EPA's "Analysis and Recommendation RE: FMC's Proposal to Reinstate the Use of Granular Carbofuran on Corn, Sorghum, and Rice."
4. EPA's **Federal Register** notice announcing receipt of FMC's request to amend their granular carbofuran registrations. July 19, 1991 (56 FR 33286).
5. EPA's **Federal Register** notice concluding the Special Review of granular carbofuran. December 11, 1991 (56 FR 64621).
6. Other correspondence and documents related to the Special Review of granular carbofuran.
7. A current index of materials in the public docket.

Written comments received in response to this notice will be placed in the public docket. If substantive comments are received during the 90–day comment period, EPA will issue a second notice responding to the comments.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed by EPA without prior notice to the submitter.

The docket and index will be available for inspection and copying from 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, at the address given earlier in this notice.

Dated: March 28, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–8733 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00377; FRL 4772–4]

Reregistration Eligibility Decision Documents for Barium Metaborate Monohydrate, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Reregistration Eligibility Decision documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the following active ingredients from List A, List C and List D, and this notice also starts a 60–day public comment period. The REDs for the chemicals listed are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on the REDs must be submitted by June 13, 1994.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00377" and the case number should be submitted to: By mail: OPP Pesticide Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. In person, deliver comments to: OPP Pesticide Docket, Room 1132, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Technical questions on the listed RED documents should be directed to the appropriate Chemical Review Managers:

Barium Metaborate Monohydrate - Brigid Lowery - (703) 308–8053

Methiocarb - Karen Jones - (703) 308–8047

Lithium Hypochlorite - Ronald Kendall - (703) 308–8068

Ethanolamine - Mark Wilhite - (703) 308–8586

Bromine - Mark Wilhite - (703) 308–8586

Mineral Acids - Kathryn Scanlon - (703) 308–8178

Peroxy Compounds - Rieman Rhinehart (703) 308–8584

Vegetable and Flour Oils - Virginia Dietrich - (703) 308–8157.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Room 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed below. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed below is substantially complete. EPA has determined that all currently registered products subject to reregistration containing these active ingredients are eligible for reregistration.

List A -	
Case 0632	Barium Metaborate Monohydrate;
Case 0577	Methiocarb;
List C -	
Case 3084	Lithium Hypochlorite;
Case 3070	Ethanolamine;
List D -	
Case 4015	Bromine;
Case 4064	Mineral Acids;
Case 4072	Peroxy Compounds;
Case 4097	Vegetable and Flour Oils;

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Response and Program Resources Branch, in Room 1132 at the address given above or call (703) 305–5805.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing the other active ingredients will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affect a RED, EPA will amend the RED by publishing the amendment in the **Federal Register.**

List of Subjects

Environmental protection.

Dated: April 6, 1994.

Daniel M. Barolo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 94–8874 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50778; FRL–4772–1]

Receipt of an Application for an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On February 2, 1994, EPA received an application from Northrup King Company for an Experimental Use Permit (EUP) for a transgenic plant pesticide. This is the fifth EUP application under the Federal Insecticide, Fungicide, and Rodenticide Act for testing with a pesticidal substance that is produced in a plant. The Agency has determined that this application may be of regional and national significance. Therefore in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received by May 13, 1994.

ADDRESSES: Comments, in triplicate, should bear the docket control number

OPP–50778 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7690.

SUPPLEMENTARY INFORMATION: On February 2, 1994, EPA received an application for an EUP from Northrup King Company, 7500 Olson Memorial Highway, Golden Valley, MN 55427. The application was assigned EPA File Symbol 67979–EUP–R. Northrup King proposes to test a δ-endotoxin (expressed from a modified gene of the soil microbe *Bacillus thuringiensis* subspecies *kurstaki*) as expressed in a series of corn lines from April 15, 1994 to May 1, 1995. Corn grown under this permit will not be permitted to enter commerce, therefore no petition for a temporary tolerance was submitted in conjunction with this EUP.

Several small-scale field experiments have been conducted under permits granted by the United States Department of Agriculture. Further testing is now required in order to further assess the commercial potential of the transgenic corn. Specific testing proposed under this application include plantings in yield trials, efficacy trials, breeding nurseries, and production nurseries.

A maximum of 45 acres are proposed for planting. The planted seed will contain approximately 0.013 grams of the δ-endotoxin. Included in the program are the states of Hawaii, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin and the commonwealth of Puerto Rico.

Upon review of the Northrup King application, any comments received in response to this notice, and any other relevant information, EPA will set conditions under which the experiments will be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Dated: April 6, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–8883 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50779; FRL–4773–8]

Receipt of an Application for an Experimental Use Permit for Use of Bromoxynil on Herbicide Tolerant Cotton Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On February 18, 1993, EPA received from Rhone-Poulenc Ag Co. an application for an Experimental Use Permit (EUP) and a petition for a temporary tolerance for the use of Buctril Gel which contains the herbicide bromoxynil, on cotton plants genetically modified to be tolerant to this herbicide. On June 4, 1993, the EUP was accepted for a period of 1 year with the provision that the crop be destroyed or used only for research purposes. The registrant has requested that the EUP be extended on a crop destruct basis until the temporary tolerance is established. Due to recent interest in the introduction of genetically modified herbicide tolerant plants into commercial agriculture, the Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before May 13, 1994.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50779 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800.

SUPPLEMENTARY INFORMATION: On February 18, 1993, an application for an EUP and a Petition for Temporary Tolerance was received from Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 for the use of Buctril Gel, which contains the herbicide bromoxynil, on cotton plants genetically modified to be tolerant to the herbicide. The EUP was requested for a period of 2 years. Data submitted in support of the temporary tolerance were insufficient to grant the temporary tolerance for the 1993 growing season. The EUP was subsequently issued on June 4, 1993, (EPA Reg. No. 264–EUP–93) for a 1–year period with the provision that the food or feed derived from the experimental program would be destroyed or fed only to experimental animals for testing purposes, or otherwise disposed of in a manner which would not endanger man or the environment. Since the temporary tolerance for bromoxynil has not yet been established, the registrant requested on March 14, 1994, that the EUP be extended for a period of 1–year under the previous provisions, which would not allow food or feed to be sold, while the issues concerning the temporary tolerance are being resolved.

The U.S. Department of Agriculture, Animal and Plant Health Inspection Service published a notice in the **Federal Register** of September 8, 1993 (58 FR 47249), of their receipt of a

petition for determination of nonregulated status of genetically engineered cotton lines. This notice and the referenced petition contain information related specifically to the genetic modification of the herbicide tolerant cotton plants which will be treated under this EUP.

The purpose of the EUP as stated on the product label is to evaluate the control of certain broadleaf weeds in transgenic Bromotol cotton. Applications of the product can be made by ground equipment only to transgenic Bromotol cotton that has been genetically modified for crop tolerance to postemergence over-the-top applications of bromoxynil.

The objectives for the 1994 testing program are stated to be: (1) Evaluate product efficacy on major broadleaf weeds that infest cotton, (2) compare weed control with commercial standard weed control systems on cotton, (3) verify transgenic seed purity during seed production, and (4) compare Buctril weed control system with commercial standard weed control systems of cotton in major cotton growing areas using standard commercial production methods and varieties.

The application for the 1994 EUP request use of 4,000 pounds of the active ingredient bromoxynil on a total of 4,000 acres of cotton. Testing is proposed for the states of Alabama, Arizona, Arkansas, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas.

Upon review of the EUP extension request, any comments received in response to this notice and any other relevant information, EPA will decide whether to issue or deny the EUP extension. If issued, EPA will set conditions under which the experiments are to be conducted. Any issuance of an EUP by the Agency will be announced in the **Federal Register.**

EPA's Office of Pesticide Programs has a Public Docket Room where a copy of the EUP application deleted of all "Confidential Business Information" will be available for public inspection. The Public Docket Room is located at Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA; the hours of operation are from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Dated: March 31, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–8884 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30319A; FRL–4187–1]

Stine Microbial Products; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Stine Microbial Products., to register the pesticide products Blue Circle and SMP PcpWi containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney C. Jackson, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 29, 1991 (56 FR 24190), which announced that Stine Microbial Products, 4722 Pflaum Road, Madison, WI 53704, had submitted applications to register the pesticide products Blue Circle and SMP PcpWi (EPA File Symbols 63950–R and 63950–E), containing the active ingredient *Pseudomonas cepacia* type Wisconsin at 3.8 percent for both, an active ingredient not included in any previously registered products.

The applications were approved on December 28, 1992, as Blue Circle as a seed treatment on various crops prior to planting (EPA Reg. No. 63950–1) and SMP PcpWi for manufacturing use only (EPA Reg. No. 63950–2).

The Agency has considered all required data on risks associated with the proposed use of *Pseudomonas cepacia* type Wisconsin, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *Pseudomonas cepacia* type Wisconsin when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on *Pseudomonas cepacia* type Wisconsin.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: April 5, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–8882 Filed 4–12–94; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

[NV–94–05 (07–FEB–94)]

Policy Statement on Rules for Transaction of Business and Operational Responsibilities of the Farm Credit Administration Board

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: On February 7, 1994, the Farm Credit Administration Board (Board) adopted a policy statement concerning rules for transaction of business and operational responsibilities of the Board. This

document consolidates in one location the substance of several separate documents. The Board Members wanted wide distribution of this document because of its importance in determining which matters should be brought to the Board Members' attention, the manner in which different matters should be brought to their attention, and the basic procedures for handling certain items.

EFFECTIVE DATE: February 7, 1994.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4003, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement concerning rules for transaction of business and operational responsibilities of the Board is set forth below in its entirety:

Policy Statement on Rules for Transaction of Business and Operational Responsibilities of the Farm Credit Administration Board

No. NV–94–05

FCA–PS–58

Effective Date: Upon adoption.

Effect on Previous Action: Supersedes, rescinds, and replaces the following: FCA–PS–32 [BM–13–DEC–90–04]; FCA–PS–33 [BM–13–JUN–91–04]; FCA–PS–36 [BM–13–FEB–92–04]; FCA–PS–40; [BM–28–APR–92–05]; FCA–PS–42 [NV–92–24 (10–JUL–92)]; FCA–PS–45 [BM–14–JAN–93–03]; FCA–PS–46 [BM–29–JAN–93–01]; FCA–PS–47 [NV–93–08 (04–FEB–93)]; FCA–PS–52 NV–93–44 (08–JUL–93)]; FCA–PS–55 [NV–93–66 (30–NOV–93)]; FCA–PS–54 [NV–93–58 (16–SEP–93)]; FCA ORDER NO. 870 (04–NOV–86); FCA ORDER NO. 879 (26–OCT–87); FCA ORDER NO. 911 (28–OCT–92).

Source of Authority: The Farm Credit Act of 1971, as amended, including Sections 5.8 (c), (d), 5.9, 5.14, and 5.19; 12 U.S.C. 2001 *et seq.*, 2242 (c), (d), 2243, 2249, and 2254.

Article I

Purpose and Table of Contents

Section 1. Purpose

These Rules for the Transaction of Business ("Rules") of the Farm Credit Administration ("FCA") Board ("Board") are adopted by the Board to supplement the statutes and regulations which govern the procedures and practice of the Board (see The Farm Credit Act of 1971, as amended, and 12 CFR Part 600 *et seq.*), and shall constitute the official rules of the Board for purposes of section 5.8(c) of the Farm Credit Act of 1971, as amended.

Section 2. Table of Contents

Article I. Purpose and Table of Contents.
Article II. Board Organization.
Article III. Voting.
Article IV. Minutes.
Article V. Board Meetings.
Article VI. Public Appearances and Attendance.
Article VII. Board Operational Responsibilities.
Article VIII. Board Member Expenses and Related Compensation.
Article IX. Amendments.

Article II

Board Organization

Section 1. Secretary to the Board

The Chairman of the Board ("Chairman") shall appoint a Secretary to the Board ("Secretary") who shall be an employee of the FCA. The Secretary shall keep permanent and complete records and minutes of the acts and proceedings of the Board. The Secretary shall be the parliamentarian for the Board.

Section 2. General Counsel

The General Counsel of the FCA shall serve as the chief legal officer of the Board.

Section 3. Individual Assignments

To the extent consistent with law, the Board or the Chairman may offer individual Members of the Board ("Member(s)") special assignments and define the duties incident thereto, and the Chairman may delegate to individual Members certain duties and responsibilities of the Chairman.

Section 4. Two Vacancies/Authority to Act

In the event two (2) Members are not available by reason of resignation, temporary or permanent incapacitation, or death, to perform the duties of their offices, the Board hereby delegates to the remaining Member the authority to exercise, in his/her discretion, any and all authorities of the FCA granted to the Agency or the Board by statute, regulation or otherwise, except those authorities which are nondelegable. This delegation of authority does not include authority to establish general policy and promulgate rules and regulations, or any delegation expressly prohibited by statute. This delegation shall include, but shall not be limited to, the exercise of the following powers:

(a) The approval of any and all actions of the Farm Credit institutions as required by statute, regulations or otherwise to be approved by the FCA or its Board;

(b) The exercise of all powers of enforcement granted to the FCA by statute, including but not limited to, the authorities contained in 12 U.S.C. 2154, 2154a, 2183, 2202a, and 2261–2274; and

(c) Any actions or approvals required in connection with the conduct of a receivership or conservatorship of a Farm Credit institution.

Authorities delegated by this Section may be redelegated, in writing, at the discretion of the remaining Member, to other FCA officers or employees.

Section 5. National Security Emergencies

Pursuant to Executive Order 12656, in the event of a national security emergency, if the Chairman is unable to perform his or her duties for any reason, the following individuals, in the order mentioned and subject to being available, are authorized to exercise and perform all the functions, powers, authority and duties of the Office of Chairman:

(a) Member of the Board of the Chairman's party;

(b) Member of the Board of the Minority party;

(c) Executive Assistant and Senior Advisor to the Chairman;

(d) Director, Office of Congressional and Public Affairs;

(e) Secretary to the Board;

(f) Chief Operating Officer;

(g) General Counsel;

(h) Chief Examiner, Office of Examination;

(i) Regional Director, Western Region, Office of Examination.

The Chairman shall ensure that FCA has an alternative location for its headquarters functions in the event a national security emergency renders FCA's headquarters inoperative. The Chairman or Acting Chairman may establish such branch office or offices of the FCA as are necessary to coordinate its operations with those of other government agencies.

Article III

Voting

Section 1. Affirmative Vote Required

Action on any matter shall require the affirmative vote of at least two (2) Members, except as provided in Article II, Section 4.

Section 2. Votes To Be Recorded

The vote of each Member, including the Chairman, on a question shall be recorded in the minutes.

Section 3. Notational Voting

(a) Nothing in these Rules shall preclude the transaction of business by the circulation of written items ("notational votes") to the Members,

provided all Members participate, in writing, in the disposition of the item pursuant to Article III, section 3(c).

(b) *Matters that may be decided by notational vote.* The Board may consider any matter that comes before it by use of notational voting procedures; however, it is best used only for routine and noncontroversial items. Any Member may submit an item to the Secretary for distribution as a notational vote.

(c) *Notational vote ballots and material.* Upon submission of an item for notational vote, the Secretary shall provide each Member a complete package of all relevant information and a notational vote ballot sheet (indicating the Member making the motion, the substance of the motion, and the deadline for return of the vote) upon which each Member can indicate his/her position by voting in the following manner:

(1) To approve;
(2) To disapprove;
(3) To abstain; or
(4) Not appropriate for notational vote.

(d) *Modifications, amendments, and withdrawals.* No partial concurrences or amendments are appropriate; however, a Member may suggest a revision to the proponent, subject to compliance with the Government in the Sunshine Act, and the proponent may withdraw his motion at any time prior to receipt by the Secretary of the votes of all Members or the end of the time period provided for on the ballot sheet.

(e) *Time limits to vote.* Within ten (10) business days of receipt, or earlier if circumstances require, each Member shall act on the matter by returning the ballot sheet. Failure to return a ballot sheet by the date requested on the sheet will result in the vote being recorded as "not voting", which causes the motion to fail pursuant to Article III, section 3(a).

(f) *Veto of notational voting procedure.* In view of the public policy of openness reflected in the Government in the Sunshine Act and the desire to allow any Member to present viewpoints to the other Members, any Member can veto the use of the notational voting procedure for the consideration of any particular matter by voting "not appropriate for notational vote".

(g) *Disclosure of results.* A summary of any action taken by notational vote shall be provided by the Secretary to the Members, Chief Executive Officer, and Chief Operating Officer, and shall be reflected in the appropriate minutes of the Board. Public disclosure is determined by the provisions of the Freedom of Information Act (5 U.S.C. 552).

(h) *Authority to designate staff to initial.* If the conduct of agency business so requires, and the Member has been apprised of the contents of any notational vote, a Member who is absent from the office may authorize a staff member to initial the item for him/her, as long as the Member has a designation memorandum on file with the Secretary.

Section 4. Telephone Conference

Any Member may participate in a meeting of the Board through the use of conference call telephone or similar equipment, provided that all persons participating in the meeting can simultaneously speak to and hear each other. Any Member so participating shall be deemed present at the meeting for all purposes.

Article IV

Minutes

Section 1. Format

The format of minutes of the Board Meetings, unless otherwise stated in these rules, or relevant statutes or regulations, shall comply with Robert's Rules of Order (Newly Revised) and the Government in the Sunshine Act.

(a) The minutes shall clearly identify the date, time, and place of the meeting, the type of meeting held, the identity of Members present, and where applicable that they participated by telephone, and the identity of the Secretary and the General Counsel present, or, in their absence, the names of the persons who substituted for them.

(b) The minutes shall contain a separate paragraph for each subject matter, and shall note all main motions or motions to bring a main motion before the assembly, except any that were withdrawn.

(c) The minutes shall not contain any reference to statements made unless a request is specifically made that a statement be made a part of the record, or if required by the Government in the Sunshine Act.

(d) The minutes of Regular Meetings shall indicate the substance and disposition of any notational votes completed since the last Regular Meeting of the Board.

(e) The vote of each Member on a question shall be recorded or the Secretary will note a unanimous consent.

(f) The minutes of the Board shall be signed by the Chairman and the Secretary, indicating the date of approval by the Board.

Section 2. Circulation

(a) Draft minutes shall be reviewed by the Chairman and General Counsel.

(b) Minutes shall be circulated to all Members one (1) week prior to their consideration at a Board Meeting.

(c) Copies of the minutes of the Meetings of the Board (Open Session) to be voted on at a Board Meeting shall be placed in all Board Briefing Books.

(d) Copies of the minutes of the Meetings of the Board (Closed Session) to be voted on at a Board Meeting shall be placed only in the Board Briefing Books of the Members, the Secretary, and the General Counsel.

Section 3. Supporting Documentation

(a) *Board briefing books.* One copy of all Board Briefing Book material shall be maintained by the Secretary. All other copies of the Board Briefing Book material for Closed Sessions shall be returned to the Secretary for disposal or maintained in a secure location approved by the Secretary.

(b) *Executive summaries.* One copy of each Executive Summary provided to any Member shall be provided to and maintained by the Secretary.

Article V

Board Meetings

Section 1. Presiding Officer

The Chairman shall preside at each meeting. In the event the Chairman is unavailable, the Member from the Chairman's political party shall preside.

Section 2. Order of Business

The agenda for each meeting shall be substantially in the following order:

I. Open Session
  A. Approval of Minutes
  B. Reports
  C. Special Orders
  D. Unfinished Business and General Orders
  1. Policy Statements
  2. Regulations
  3. Other
  E. New Business
  1. Policy Statements
  2. Regulations
  3. Other
II. Closed Session
  A. Reports
  B. Special Orders
  C. Unfinished Business and General Orders
  D. New Business
III. Adjournment

Section 3. Calls and Agenda

(a) *Regular meeting.* The Secretary, at the direction of the Chairman, shall issue a call for items for the agenda to each Member, the Chief Operating Officer, and the Office Directors of FCA. The Secretary shall provide to the Chairman a list of all the items

submitted, including a list of outstanding notational votes and matters voted "not appropriate for notational vote"; the Chairman shall then establish the agenda to be published in the **Federal Register**.

(b) *Special meeting.* Special Meetings of the Board may be called:

(1) By the Chairman; or

(2) By any two Members; or

(3) If there is at the time a vacancy on the Board, by any Member.

Any call for a Special Meeting shall set forth the business to be transacted and shall state the place and time of such meeting. Except with the unanimous consent of all Members, no business shall be brought before a Special Meeting that has not been specified in the notice of call of such meeting.

(c) *Notice.* The Secretary shall give appropriate notice on any and all meetings and make the call for Special Meetings. Reasonable efforts to provide such notice to Members shall be made for all meetings of the Board, but failure of notice shall in no case invalidate a meeting.

Section 4. Board Materials

Complete Board Briefing Books shall be distributed to each member at least two (2) full business days prior to any regular meeting. Unless agreed to by all Members, no vote may be taken on an issue unless the necessary material has been provided to the Members not less than twenty-four (24) hours prior to the Board Meeting to consider such issue.

Section 5. Parliamentary Rules

Unless otherwise stated in these Rules, or relevant statutes or regulations, the meetings of this Board shall be conducted in accordance with Robert's Rules of Order (Newly Revised) (9th Edition).

Article VI

Public Appearances and Attendance

Section 1. Attendance

Members of the public may attend all meetings of the Board except those meetings or portions of meetings which are closed as directed by the Board, consistent with the Government in the Sunshine Act. Members of the public may speak or make presentations to the Board under the rules outlined under this article.

Section 2. Presentations to the Board

Members of the public may make a presentation to the Board only on the basis of a written request and statement covering the subject matter received at least five (5) days prior to the meeting, which is approved by a majority of the Board.

Section 3. Limitations

Public presentations may not conflict with the provisions of the Administrative Procedure Act and other Board policies on the handling of public comments. In the event that a presentation is made concerning a regulation during the comment period, the presenter must submit a summary or a text of their comments to be filed along with other comments received.

Article VII

Board Operational Responsibilities

Section 1. General

The purpose of this article is to ensure the efficient operation of the Farm Credit Administration (FCA), the FCA Board (Board), and the Chief Executive Officer of the FCA (CEO) concerning operational responsibilities. This rule shall, by itself, neither preclude the CEO from bringing to the Board issues on which this rule does not require Board action, nor preclude the Board from involving itself in matters not addressed herein. The Board might, for example, be involved in operational matters that become, in the Board's view, policy matters as a result of special congressional attention.

Section 2. Documents and Communications

(a) *CEO responsibilities.* The CEO is responsible for ensuring the accomplishment of the goals set by the Board within the constraints imposed by statue, regulation, Board policy, precedents, sound management practices, and budget resource limitations. The CEO will ensure effective and efficient mechanisms that accomplish the desired goals. Those mechanisms include the development of specific objectives, action plans, budgets, procedures, administrative policies, communications with Farm Credit institution employees and directors, and other activities as needed. Proposed actions that are inconsistent with existing Board policy require Board approval. It is understood that a substantial part of the CEO's and staff's jobs requires the exercise of sound judgement in applying statutory, regulatory, Board policy, and precedential guidance to specific situations, and in most cases the Board does not expect to take part in applying existing guidance to specific situations. There may be situations where an interpretation of existing guidance would constitute the formulation of policy; the CEO should refer such interpretations to the Board.

(b) *Approval, review, and consultation.* The FCA Board is responsible for determining the agency's position on policy matters affecting the agency's mission. The FCA Board typically expresses its position through the approval of regulations and Board Policy Statements that define the goal(s) to be accomplished. Board Policy Statements and Bookletters should be reviewed at least every five (5) years.

Proposed and final FCA regulations, Board actions, and minutes of Board meetings must be approved by the Board. The promulgation of regulations adopted by the Board shall be in compliance with the requirements of the Farm Credit Act of 1971, as amended, and the Administrative Procedure Act. **Federal Register** notices must be approved by the Board, except for announcements and notices that merely make public prior actions that have been taken by the Board. The following are examples of **Federal Register** notices that need not be approved by the Board: Notices concerning effective dates or technical corrections of regulations, notices of meetings or hearings, notices publishing Board Orders and Policy Statements, and notices informing the public of the amendment or cancellation of Farm Credit institution charters.

Bookletters, memoranda, bulletins, and other mass mailings to Farm Credit institutions (except documents listed in Attachment A) must be reviewed by the Board prior to distribution. Documents may be added to or deleted from Attachment A by Board vote.

The issuance of a "no action" letter is a policy matter requiring Board approval. For the purposes of this statement, a "no action" letter is a statement to a Farm Credit institution that, notwithstanding any other provision of law or regulation, the Board will take no action against the institution solely because it engaged in conduct specified in the letter.

Authority to promulgate internal administrative issuances, including FCA Policies and Procedures Manual (PPM) issuances, rests with the Chairman as CEO and may be delegated to the Chief Operating Officer. The CEO shall provide the Board with final drafts of PPM issuances and other administrative issuances for an appropriate consultative period if those issuances relate to examination and supervision, audits, internal controls, the budget, the strategic planning process, regulation development, or personnel matters relating strictly to promotion or pay.

(c) *Signature authority.* Authority to sign official Board documents,

including, but not limited to, proposed and final regulations, **Federal Register** notices, Board actions, no-action letters, and minutes is delegated to the Secretary to the Board (Secretary). Documents executed by the Secretary or an alternate will be signed under the caption "By Order of the Board" and reflect the title of "Secretary of the Board," or "Acting Secretary of the Board" as appropriate. The Chairman has the authority to sign bookletters, memoranda, bulletins, and other mass mailings to Farm Credit Institutions, and such authority will not be delegated to others (except for documents listed in Attachment A).

(d) *Correspondence.* The Chairman shall, as required by section 5.10(a)(3) of the Farm Credit Act of 1971 (Act), approve and sign correspondence to Members of Congress, correspondence responding to White House referrals, or other correspondence on behalf of the Board or the agency. The Chairman may delegate approval and signature authority for such correspondence to FCA Office Directors when the subject matter involves congressional or White House case work. When the subject matter involves the presentation of an agency position or policy relative to regulations, legislation, etc., the Chairman may not delegate authority, and the correspondence must be approved by the Board, except that the Board need not approve a previously approved response or a restatement of previously adopted Board policy. Board approval does not apply when the Chairman is speaking only for him or herself and includes the appropriate disclaimer. Likewise, on similar matters, Board Members should include appropriate disclaimers. The Chairman or the Chairman's designee has authority to sign acknowledgements or interim responses without Board approval, provided such responses contain no policy statements or only previously approved statements.

(e) *Authentication and certification of records and documents.* The Chairman shall designate who is authorized and empowered to execute and issue under the seal of the FCA, statements authenticating copies of, or excerpts from, official records and files of the FCA; and to certify, on the basis of the records of the FCA, the effective periods of regulations, orders, instructions, and regulatory announcements; and to certify, on the basis of the records of the FCA, the appointment, qualification, and continuance in office of any officer or employee of the FCA, or any conservator or receiver acting under the direction of the FCA. The designated official(s) may be further empowered to sign official documents and to affix the seal of the FCA thereon for the purpose of attesting the signature of officials of the FCA.

Section 3. Financial and Strategic Management

(a) *Budget approval.* The CEO shall, consistent with the provisions of the Act, other law and regulations, and applicable policy, oversee the development of budget proposals and cause the expenditure of funds within approved budgets to meet the agency's mission and objectives. The Board will approve an object class budget for the agency as a whole and a budget for each office. Any change to the object class budget for the agency as a whole will be approved by the Board. However, reallocation of funds between object classes within an office that has a *de minimis* effect (less than 2%) on the agency total for the object class need not be approved by the Board.

(b) *Procurement.* The CEO has the authority, consistent with FCA and federal policies and practices, to purchase or negotiate to purchase necessary services and/or materials for the operations of the agency. The Board shall exercise its authority to approve procurements through its approval of the budget. The objectives of single procurements in excess of $100,000 shall be made clear in conjunction with the budget approval process. For procurements outside of the Budget approval process, the Board shall approve expenditures and statements of work for amounts in excess of $100,000.

(c) *Strategic planning.* The Board has authority for the oversight and approval of strategic planning, including budgetary and regulatory planning, and will exercise its involvement in these areas via the Strategic Planning Committee (Committee). The Committee will consist of the Board Members' Executive Assistants, the Chairman's Executive Assistant, and the Chief Operating Officer. The Committee shall be coordinated by the Chief Operating Officer. The Committee shall make periodic reports to the Board regarding its activities.

(d) *Information resources.* To ensure a reasonable return of efficiency and effectiveness given the costs of the investment, information and information resources will be managed to assure that the agency collects and disseminates the information necessary to the effective discharge of the agency's mission; that information activities reflect the goals and priorities in the agency's strategic and operational plans; and that investment decision in information resources be made on a life-cycle basis so that overall costs and benefits are weighed rather than simply the initial costs and benefits.

To ensure this objective, oversight of major automation purchases, projects, and policies at FCA will be overseen by an IRM Steering Committee of senior officials to provide oversight, review, and validation of IRM initiatives. The committee will consist of the Chief Operating Officer, and the Office Directors of the Offices of Examination, Special Supervision and Corporate Affairs, Resources Management and General Counsel, one rotating member chose from the other FCA offices and the Chief of the Information Resources Division. The COO shall chair the committee.

Section 4. Human Resources

The CEO has authority, consistent with the Act, FCA policy and budget, and federal personnel rules to hire the personnel necessary to carry out the objectives of the agency. Each Board Member is entitled to appoint staff within the constraints of the adopted budget for the Office of the Board. Consistent with the Act, the Board shall approve the appointment of the "heads of major administrative divisions," which the Board interprets to mean the Chief Operating Officer and career Office Directors. The Chairman has authority to appoint the Secretary and noncareer (political) Office Directors but does so with the understanding that all Agency representations by such staff are on behalf of the Board.

(a) *Organization chart.* Consistent with its mandate to approve regulations and the appointments outlined above, the Board shall approve the FCA organizational chart down to the Office level along with relevant functional statements for each Office. Authority to make organizational changes within any Division shall rest with the CEO, and may be delegated to the COO or Office Directors.

(b) *Chief Operating Officer (COO).* The COO shall report to the Chairman as CEO regarding all matters established to be CEO responsibilities as listed in this Policy Statement, including such administrative items as approval of leave, etc. The COO shall report to the Board regarding matters on which it has retained responsibility. The same shall be said for the Secretary and the Director of the Office of Congressional and Public Affairs.

(c) *Inspector General (IG).* The IG shall report to the Chairman as CEO and agency head. The CEO shall be responsible for overseeing the audit resolution process. However, the CEO must obtain Board approval of

resolutions where the issue would normally require Board action. The CEO (through his/her designee) shall be responsible for implementation and audit followup. The Chairman will provide a briefing in the appropriate setting for the Board on the Inspector General's Semi-Annual Report to Congress within ten (10) working days of the Chairman's transmittal of the Report to Congress. The Chairman will ask the IG and Audit Followup Official to discuss the status of any unresolved audit recommendations, unimplemented management decisions, and other issues identified in the Semi-Annual Report. Consistent with its budgetary responsibility, the Board must approve all audit resolutions that result in a cumulative cost to the Agency in excess of $25,000 per audit. This requirement applies to audits commenced after May 1, 1993.

(d) *Director, Office of Secondary Market Oversight.* The Director shall report to the FCA Board regarding general policy and rulemaking issues and to the FCA Chairman as CEO relating to administrative activities of the Office.

(e) *General Counsel.* The General Counsel shall report to the Chief Operating Officer concerning administrative matters and to the Board regarding matters of agency policy. Additionally, the General Counsel, by the nature of the position, shall, as appropriate, maintain special advisory relationships in confidence as necessary with individual Board members. The General Counsel shall keep the Board fully informed of all litigation where the Agency is involved.

(f) *Performance appraisals.* Each Board member is responsible for appraising the performance of his or her staff. The Chairman, after consultation with the other Board members, is responsible for the appraisal of the performance of the Secretary to the Board. The Chairman as CEO, after consultation with the other Board members, is responsible for appraising the performance of the COO, the Inspector General, the Director of OCPA, the Director of OSMO, and the EEO Officer. The COO is responsible for appraising the performance of the career Office Directors and other staff that report directly to him or her. The CEO, in consultation with the other Board members, is responsible for reviewing the performance appraisals conducted by the COO. All performance appraisals will be conducted in accordance with the procedures set forth in the agency's PPM.

Section 5. Litigation

The CEO has authority to undertake litigation to defend the agency, consistent with established Board policy. The Board will approve litigation where the agency is plaintiff, will approve recommendations to the Justice Department to pursue an appeal, and will approve positions advanced in litigation that conflict with existing Board policy or establish a significant new policy.

Section 6. Examinations

Consistent with the Act, the Board shall adopt an annual Schedule of Examination and approve the policy scope of examination. The Chief Examiner shall report quarterly to the Board on the status of implementing the schedule and other information associated with the execution of OE's strategic plan. Included in that report shall be a discussion of general trends and significant examination issues and concerns. This report may be given in conjunction with the quarterly review of System performance.

Article VIII

Board Member and Related Expenses

Section 1. Pre-Confirmation Travel

Travel expenses incurred by an FCA Board nominee that are solely for the purpose of attending his or her Senate confirmation hearings will be considered personal expense of the nominee and will not be reimbursed by FCA. However, consistent with existing General Accounting Office interpretations, the FCA will pay for a nominee's travel expenses to the Washington, DC metropolitan area (including lodging and subsistence), if payment is approved, in advance whenever practicable, by the Chairman or Acting Chairman based on a determination that the nominee's travel is related to official business that will result in a substantial benefit to the FCA. That determination will be made on a case-by-case basis and is within the sole discretion of the Chairman or Acting Chairman. The same standards and policies that apply to the reimbursement of Board members' travel expenses will apply to the reimbursement of nominee's expenses. As part of the documentation for the approval process, the Chairman or Acting Chairman must execute a written finding that a nominee's travel would substantially benefit the FCA.

Travel that may result in substantial benefit to the FCA could include meetings, briefings, conferences, or other similar encounters between the nominee and FCA Board members, office directors, other senior agency officials, or other senior congressional and executive branch officials, for the purpose of developing substantive knowledge about the FCA, its role, its interaction with other Government entities, or the institutions that it regulates. Meetings or briefings of this nature may enable a nominee to more quickly and effectively assume leadership of the agency after confirmation by the Senate and could thus substantially benefit the agency.

Section 2. Board Member Relocation

Board members will be reimbursed by FCA for travel and transportation expenses incurred in connection with relocation to their first official duty station. Expenses for which reimbursement will be allowed generally include, but are not limited to the following:

(a) Travel and per diem for the Board member;

(b) Travel, but not per diem for immediate family of the Board member;

(c) Mileage if privately owned vehicle is used in travel; and

(d) Transportation and temporary storage of household goods.

Each relocation will be considered separately and all rates and allowances will be determined at the time of authorization, notwithstanding the limitations of 5 U.S.C., Chapter 57 and the Federal Travel Regulations. Reimbursement of additional expenses may be authorized if warranted by specific circumstances. Board members will be issued a specific prior written authorization by the Chief of the Human Resources Division detailing the expenses that may be reimbursed and will be required to execute a one year service agreement.

Section 3. Representation and Reception

The Farm Credit Act of 1971, as amended, authorizes the expenditure of Farm Credit Administration (FCA) funds for official representation and reception expenses. Expenditures of funds for official representation and reception expenses shall not exceed any statutory limitation placed on the expenditure of such funds. Additionally, use of the representation and reception fund is discretionary and the Board may determine in any fiscal year that it will spend no funds for official representation and reception activities. Furthermore, the official representation and reception fund shall be a fund of last resort and shall not be used for expenditures that can properly be classified as another type of agency expenditure.

All expenditures of funds for official representation and reception expenses shall be in accordance with the guidelines contained in this rule. Furthermore, all such expenditures shall be consistent with the decisions of the Comptroller General of the United States pertaining to official representation and reception expenses, except that no expenditure of representation and reception funds shall be made for paying expenses of FCA or other Federal Government employees at any official representation and reception function.

Official functions falling within the representation and reception fund category would be activities of the FCA Board or of individual members of the Board, acting in their official capacity as representatives of the FCA, that involve extending official courtesies to public and foreign dignitaries on occasions associated with the mission of FCA. Expenses for such activities could include, for example:

Food and beverages, either formal meals, snacks or refreshments; receptions; banquets; catering services; tips and gratuities; invitations; rental of facilities and incidental equipment; and supplies and services that are incurred in hosting such functions.

Typical examples of proper expenditures of FCA representation and reception funds include:

(a) The FCA Board hosting an FCA-sponsored reception for non-Government personnel, e.g., presidents and chief executive officers of Farm Credit System associations; or

(b) A Board member hosting and paying for the lunch of a representative of the Farm Credit Council when the purpose of the lunch is to discuss Farm Credit business.

No expenditure of representation and reception funds may be made for activities relating solely to personal entertainment, such as attendance at a sporting event or a concert or for expenditures generally regarded as personal obligations.

Before expenditures for official representation and reception expenses are made by the FCA Board or individual members of the Board, approval shall be obtained from the Chairman of the Board. FCA–006 form, "Official Representation and Reception Expense," shall be submitted, through the Secretary to the Board, to the Chairman for approval. After approval by the Chairman, the Secretary to the Board will submit the request to the FCA Certifying Official for final approval. If circumstances necessitate expenditures for official representation and reception expenses without prior approval by the chairman, form FCA–006 shall be submitted, through the Secretary to the Board, to the Chairman with an attached explanation of why prior approval could not be obtained. If the expenditure is not approved by the Chairman or the FCA Certifying Official, the party making the expenditure will be responsible for all costs associated with the expenditure.

Article IX

Amendments

Section 1

The business of the Board shall be transacted in accordance with these Rules as the same may be amended from time to time: Provided, however, that upon agreement of at least two (2) Members convened in a duly called meeting, the Rules may be waived in any particular instance, except that action may be taken on items at a Special Meeting only in accordance with Article V, Section 3(b), hereof.

Section 2

These Rules may be changed or amended by the concurring vote of at least two (2) Members upon notice of the proposed change or amendment's having been given at least thirty (30) days before such vote.

Attachment A

Documents Which Are Mailed in Mass to Farm Credit Institutions Which Do Not Have To Be Reviewed by the FCA Board Prior to Distribution

1. Call for Reports of Financial Condition and Performance and Loan Account Reporting System Data for the Quarter Ending _____.
2. Regulation handbook updates, including Federal Register tearsheets for FCA Handbook mailings.
3. PPM mailings.
4. Vacancy Announcements below the Division Director level.
5. Interpretations of accounting pronouncements applicable to the Uniform Call Report Instructions.
6. Young, Beginning and Small Farmer reports.
7. Budget data for the Banks of the Farm Credit System that is prepared for the Office of Management and Budget.
8. Changes to FCA Examination Manual.
9. Information Systems Bulletins.
10. Changes to Loan Account Reporting System and Uniform Call Report requirements and related instructions.
11. Office of Inspector General mailings for official audit purposes.

Adopted this 7th day of February, 1994.

By Order of the Board.

Dated: April 7, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–8905 Filed 4–12–94; 8:45 am]

BILLING CODE 6705–01–P–M

Statement of Policy on System Institution Activities Involving the Potential for Nonexclusive Territories

AGENCY: Farm Credit Administration.

ACTION: Statement of policy; request for comments.

SUMMARY: The Farm Credit Act of 1971 (1971 Act) gives the Farm Credit Administration (FCA) broad powers to issue and amend the charters of Farm Credit System (System) institutions and regulate the exercise of their powers. In most instances since 1933 the FCA has issued charters and regulations that authorize institutions to provide their services in exclusive territories. The FCA Board has determined that since the agency may be requested to issue nonexclusive charters in the future or to modify the regulations governing out-of-territory activities, the FCA Board should adopt a policy statement setting forth its views on nonexclusive territories. The FCA Board is requesting comments on its views.

DATES: Comments must be submitted on or before [June 13, 1994.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Kenneth D. Smith, Executive Assistant to FCA Board Member Gary C. Byrne, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all comments received will be available for examination by interested parties in the offices of the Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Smith, Executive Assistant to Board Member Gary C. Byrne, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4010, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The 1971 Act authorizes the FCA to issue and amend the charters of System institutions and regulate the exercise of their powers. Included in this authority is the ability for the FCA to issue or amend charters or promulgate regulations that would result in increased competition among System institutions. The issue of competition among System institutions arises, typically, in two types of situations. First, charters could be issued

authorizing two or more System institutions to extend the same types of credit services to the same types of customers in the same geographic territories; such charters have typically been issued as a result of mergers or other chartering actions requested by institutions. Second, institutions could be authorized by regulation to engage in certain activities outside of their chartered territories.

Background

Although the FCA has broad authority to issue charters that authorize two or more institutions to serve the same territory, exclusive charters have been the general practice since 1933.[1] The exceptions to this general practice are worth noting. Prior to the Agricultural Credit Act of 1987 (1987 Act), at least four types of competition existed at various times as follows:

(1) Nonexclusive Charters

The 1916 Federal Farm Loan Act (1916 Act) authorized the creation of numerous National Farm Loan Associations, predecessors to the Federal land bank associations (FLBAs). Few, if any, of these associations had exclusive territories. Most of the charters involving nonexclusive territories were issued prior to 1933. At one time, there were about 5,000 FLBAs. As a result of mergers and territorial realignments, only a few FLBA charters with nonexclusive territories remain, all in the Texas District.

(2) Competition Between Short- and Long-Term Lenders

The potential for intra-System competition has always existed between the long-term lender (Federal land bank/FLBA) and the short- and intermediate-term lender (Federal intermediate credit bank/production credit association/agricultural credit association) (FICB/PCA/ACA) serving the same territory because of overlapping lending authorities.

(3) Specialized Association Charters

In the early days of the System, FCA granted certain associations authority to finance specific commodities over wide geographical areas (often statewide) resulting in the issuance of charters with the same territory as other associations in the area. Only two of these specialized lending charters remain: two ACAs on the east coast have full authority in an exclusively chartered area and very limited authority in broader areas.

In addition, a small number of other nonexclusive charters were granted. Very few of the other nonexclusive charters granted during this early period still exist, and they are primarily located in New Mexico, a small area of California, and Nevada.

(4) Competition Created By Statute

The 1916 Act created parallel long-term mortgage credit systems to serve both commercial banks and direct retail customers: A system of cooperative mortgage banks and a system of joint stock land banks owned by investors. The former evolved into the Federal land banks (now the farm credit banks or agricultural credit banks) and the latter no longer exist.[2]

In addition to these existing forms of competition, the 1987 Act contained several provisions that have resulted in competition among System institutions:

(1) Section 411

This section provided that PCAs and FLBAs sharing substantially the same territory were required to vote on whether to merge. These mergers led to five ACAs with nonexclusive charters in areas where the parties merging did not have identical territories. The FCA Board also provided any association that no longer had exclusive territory as a result of such mergers an opportunity to become an ACA. Several of the associations affected by these "411 mergers" subsequently became ACAs.

(2) Section 413

This section required a merger vote by the 13 banks for cooperatives (BCs). Eleven of the 13 banks voted to merge, resulting in the creation of three BCs with the same territory.

(3) Section 433

This section authorized certain associations to change their affiliation from one Farm Credit Bank (FCB) to another. The district FCB from which the association shifted retained its chartered authority to continue to serve the area through other existing or newly created associations. However, competitive charters cannot be issued in these areas unless the affected parties give their consent. So far, no competitive association charters have resulted from this provision.

In addition to these statutory authorities, there are certain restraints on the FCA's authority to issue competitive charters.

First, following passage of the 1987 Act, the FCA Board granted charters to institutions serving the same territory in those situations arising from mergers that were specifically required to be voted on by the 1987 Act or as necessary to provide for a level playing field as a result of those mergers. However, because of concerns surrounding the potential for competitive situations arising from the 1987 Act, the FCA Board determined it would not issue competitive charters, other than as required by statute, until it had thoroughly reviewed the issue.

Second, the law specifies certain circumstances in which the FCA may only grant competitive charters if all of the institutions affected by the proposed charter grant their approval. Those circumstances involve:

(1) The territories where associations changed their affiliation from one FCB to another in accordance with section 433 of the 1987 Act; and

(2) The States of Mississippi, Alabama, and all of Louisiana except the territory served by the Northwest Louisiana PCA.

With the exception of those situations discussed above where an institution must obtain the consent of another institution, the law does not prohibit institutions from requesting "competitive charters." Indeed, the 1971 Act does not directly address the issue of competition among System institutions. Instead, the Act concerns itself with the purposes, operating objectives, and authorities of the System and its regulator. When the agency receives these requests it must act on them, based on an analysis of all relevant facts, and arrive at a reasonable conclusion that is consistent with the purposes of the Act. In the first few years after passage of the 1987 Act, most of the FCA's decisions involving competitive issues were associated with the merger of unlike associations to become ACAs. In the last few years, the competitive issues coming before the FCA have involved banks as well as associations. In addition to matters involving charters, competition issues have arisen in the context of out-of-territory authorities provided for by regulations. By this policy statement, the FCA Board now expresses its views on how the agency will approach decisions that may involve competition among System institutions.

[1] The Emergency Farm Mortgage Act of 1933 (1933 Act) authorized the chartering of production credit associations (PCAs) and other institutions. FCA, generally, has issued PCA charters with exclusive territories.

[2] In 1993, similar systems were created to serve cooperative borrowers (the banks for cooperatives) and short-term production credit users. The production credit system consisted of the PCAs, FICBs, (now the farm credit or agricultural credit banks), and a system of production credit corporations (which no longer exist).

Recent Analysis

In 1990, the FCA contracted with consultants to review the issue of competition within the System and provide the FCA Board with options to consider. In 1991, as a part of its legislative initiative, the FCA Board recommended to Congress that the 1971 Act be amended to require that ACA charters contain exclusive territory. In 1992, the FCA Chairman appointed FCA Board Member Gary C. Byrne to lead an internal work group focusing on the issue. This work group analyzed competition from several perspectives and developed a set of recommendations for agency action in the absence of legislative changes.

FCA staff identified advantages and disadvantages of various approaches to the general question of competition within the System and also considered several challenging situations that may (or have) come before the agency:

(1) An association not properly serving its territory;

(2) An association wanting to merge, but potential mergers would involve a charter with nonexclusive territories as a result of an inability to establish congruent territory; and

(3) An eligible customer with operations in two or more association territories wishing to choose which association would best serve his/her needs.

Opinion Interviews

FCA staff interviewed representatives of some of the System institutions that currently have the authority to compete. The purpose of the interviews was to gain insight into how competition is working within the System. Among those interviewed, there was no consensus on either the benefits or disadvantages of competition.

Some interviewees questioned whether "competition" should exist in the current environment. There was agreement among institution managers that customer loyalty to the System plays a big part in maintaining business relationships and, as a result, competing institutions should not do anything that would damage the System's reputation. Most respondents wanted to preserve the funding benefits of the System's Government-sponsored-enterprise (GSE) status. Some association managers wanted to be able to shop for funding from different System banks. Several operational problems relating to the accommodation of competition in the current environment were cited: joint and several liability; System institution board representation; size differential; and common funding through a bank jointly owned by competitors.

In addition to these interviews, FCA staff conducted a limited survey of System farmer-customers, directors, and managers. The sample was relatively small, consisting of 51 respondents of 135 randomly selected, so no definitive conclusions were drawn. The survey was done to get a sense of the nature and extent of support for, or opposition to, intra-System competition. Six questions on the survey represented various positions the agency could take relative to the competition issue. Additionally, the survey respondents were provided the opportunity to write in any comments on the issue and include those comments as part of the survey.

The results of the survey indicated no clear consensus for or against competition. The farmer-customers surveyed were somewhat more likely to favor competition than were the managers and directors. Most System institution managers surveyed were opposed to competition; however, the directors believed that some form of competition would be justified if the farmer-customers were not being adequately served. The only area of consensus was opposition to chartering a new association within the territory already being served by an existing association.

Competition in the Larger Market

FCA staff also reviewed the economic literature on competition. System institutions are participants in the agricultural credit market, which is a part of the broader financial credit market. The financial credit market, generally, is among the most competitive markets in the world, in that no one market participant can control price and availability. While this general competitiveness appears to be true for the agricultural credit market as a whole, there are exceptions in some geographical areas and specialty submarkets. Staff concluded that Government action should not normally be required to ensure that competitive markets for agricultural credit exist, and that Government action might be appropriate if the agricultural credit market in a specific geographical area or agricultural credit submarket were noncompetitive.

Because System institutions compete in the broader agricultural and general credit markets, increasing the amount and nature of competition between and among System institutions could only improve the availability, terms, and price of credit for eligible customers if the overall market for agricultural credit in a certain area were noncompetitive. Therefore, when the local market for agricultural credit is already competitive, the additional economic benefits of increased competition, including competition among System institutions, are likely to be relatively small (although there may be other, noneconomic reasons for such competition). Conversely, when the local market for agricultural credit is not competitive, the economic benefits of increased competition, including competition among System institutions, are likely to be relatively large (although there may be other, noneconomic reasons for avoiding such competition).

Finally, the FCA attempted to determine if there were lessons to be learned or knowledge to be gained by looking at competition between the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae). These two GSEs carry an implicit Federal government guarantee. Freddie Mac and Fannie Mae both serve the same market for secondary housing loans and, although both have existed for some time, they have only competed directly against each other since 1990.

Interviews were conducted with representatives from the two GSEs, the Federal government oversight agency, independent rating agencies, and those who do business with both companies. Almost all of the participants believed that competition between the two had yielded extremely productive results, both in the way of new products for housing consumers as well as investors.

The interviewees expressed little concern that the newly acquired ability to compete could force one GSE out of business, thus triggering some Federal response. However, Freddie Mac and Fannie Mae are a duopoly for the market they serve. Between the two, they clearly control the single-family housing, conventional loan secondary market—an enormous market to begin with—which shows every sign of continued growth. Because of the nature of the market, its size, its growth, and the limited number of market participants, vigorous innovation and competition are not surprising.

After considering the work group's analysis, the FCA Board concluded that the FCA's current policy of granting exclusive charters, with limited exceptions, has been generally effective in facilitating the delivery of agricultural credit and related services to eligible customers. However, the FCA Board also recognizes that its current position does not provide for consideration of competitive charters, even if such charters would provide customers with lower cost or higher quality agricultural credit.

Consequently, the FCA Board proposes to modify its current policy on competition to authorize the issuance of competitive charters when doing so would enhance, beyond the status quo, the availability of the highest quality, lowest cost credit and credit service, on a safe and sound, financially sustainable basis, to eligible customers. The FCA Board invites your comments on the following statement.

Proposed Policy Statement on System Institution Activities Involving the Potential for Nonexclusive Territories

Competition between Farm Credit System institutions can potentially occur as a result of the Farm Credit Administration's (FCA) authority to issue nonexclusive charters and, in some situations, by regulation. As a general rule, the FCA grants charters and issues regulations which do not provide for intra-System competition. The FCA Board continues to endorse this general practice of noncompetitive territories as being reasonable for a cooperatively owned enterprise that competes with a variety of other credit suppliers.

Nevertheless, the degree to which the FCA's authority can influence the level of territorial exclusivity is guided by the overall purposes and, in some cases, the specific direction of the Farm Credit Act of 1971 (Act). Briefly stated, the Act seeks to provide for a customer-owned system of cooperative lending institutions that can provide sound and constructive credit and credit services for agriculture, certain types of rural housing, and utilities while maintaining high levels of safety and soundness as measured by sustained financial viability. If a System institution were to propose a territorial structure or lending authority different from current practice, the FCA's response would be based on how the new proposal meets the purposes of the Act. There may be limited circumstances under which some form of competition would result in higher quality, lower cost service to customers, on a safe and sound, financially sustainable basis.

The purpose of this policy statement is to provide a consistent framework within which the FCA may respond to issues that involve the potential for competition as a result of either charter, regulation, or other request submitted by System institutions.

The FCA Board recognizes that System institution boards may occasionally seek to alter their charters or expand authorities beyond current boundaries to enhance efficiencies or to provide better service to customers. Prior to formally submitting requests, the FCA encourages the adjacent institutions involved to resolve any territorial disputes that may result from the request in a fair and amicable manner. Considerable guidance is provided in FCA regulations concerning routine charter amendments, territorial transfers, and out-of-territory lending. Additionally, the FCA Board encourages the development of innovative proposals to address territorial and competitive issues that are not covered by existing regulation. These may range from one institution granting permission for the other institution to lend to its customers, to reciprocal agreements to compete in each other's territory, to providing some form of compensation for ceded territory, or to enter into some form of joint venture. The FCA will provide assistance, upon request, to enable System institutions to reach agreements on such matters. Naturally, such innovative agreements must be consistent with the Act and FCA regulations.

In the event agreements are not reached, based on the purposes of the Act, the standard for addressing each request involving territorial issues with the potential for intra-System competition is consistent with what is used in deciding all charter requests, that is:

> Determine whether or not the proposal will enhance, beyond the status quo, the availability of the highest quality, lowest cost, credit and credit service on a safe and sound, financially sustainable basis to eligible customers.

In determining whether or not the above standard is met, the FCA will analyze a range of factors, as each is deemed relevant to the situation, as outlined in the following categories:

1. Finance and Management

(a) Whether the financial and managerial capacity exists to provide competitive services and generate sufficient earnings so the new enterprise can continue on a sustainable basis.

(b) The degree to which it is evident that the proposal could adversely affect the cost of funds to either the specific institutions involved or the System as a whole.

(c) Whether the proposal will adversely affect the institutions involved, thus creating potential liability for the Farm Credit System Insurance Fund and/or subsequently for banks under joint and several liability.

2. Market Conditions

(a) Whether there is significant information that the market involved is being inadequately served by a System institution.

(b) The extent to which the market involved is being served by other credit sources.

3. Participant Opinion

(a) The views and concerns of the affected System institutions, including, as appropriate, the views of customer-shareholders, recognizing that significant disagreement between members of a cooperative system has the potential for adverse consequences regarding matters for which they are mutually responsible.

Depending upon the situation, other factors, such as the degree to which the FCA's discretion is affected by statutory or judicial considerations or the opinions of outside oversight parties, might also affect the FCA's decision.

The FCA intends to apply this analysis, on a case-by-case basis, to requests that involve charters where two institutions would be serving all or part of the same territory. Similarly, the FCA will apply the same analysis should future efforts occur to promulgate regulations that would expand or change the authorities of institutions to engage in out-of-territory activities.

In the case of charter requests, to ensure that it obtains all of the necessary information, the FCA will develop procedures, including a checklist, regarding the submission of materials. The procedures will include mechanisms that will enable the FCA to solicit and consider the views of System institutions affected by a proposed request. Consistent with the procedures provided, the requesting institution will be expected to make its case that the standard outlined in this policy will be met. The FCA recognizes that, by their nature, some of the factors listed would be addressed by the agency rather than the requesting institution.

While this policy is designed to address the broader issues of the potential for intra-System competition, several years ago the FCA determined that it would temporarily avoid acting on requests for competitive charters until it completed its review of the matter and issued a policy. This policy is designed to achieve that objective. Therefore, following the development of these procedures, the FCA Board will be in a position to entertain charter requests involving the potential for competition in accordance with the principles contained in this statement.

The FCA recognizes that System institutions continue to undergo structural change in their effort to best meet the System's mission. The agency realizes the importance of these changes and will consider each request promptly.

Specific Request for Comments

The FCA Board intends to evaluate any matter involving competition among System institutions that comes before it by balancing all relevant factors on a case-by-case basis. The FCA Board specifically invites comments on the factors set forth in the proposed policy statement and on the appropriate analysis of such factors, and asks for suggestions for additional factors or analyses that should be considered by the FCA Board.

No one factor is likely to be dispositive in any given matter, and the FCA Board has set only one specific criterion or standard that must be met in each proposal involving increased competition among System institutions—that the proposal, if approved, would lead to a net overall improvement in the availability, quality, and price of credit and credit services to eligible customers. The FCA Board invites suggestions on the information it should require and the procedures it should use to determine the "availability, quality, and price of credit and credit services" when it is considering a matter involving competition among System institutions.

Dated: April 7, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–8902 Filed 4–12–94; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission

OMB Control No.: 3060–0410.

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report, FCC 495A and FCC 495B.

Expiration Date: 03/31/97.

Estimated Annual Burden: 12,000 total hours; 40 hours per response.

Description: The Forecast of Investment Usage Report and Actual Usage of Investment Report implement the Commission's *Joint Cost Order*, CC Docket No. 86–111, 2 FCC Rcd 1298 (1987), which requires that certain telephone plant investments used for both regulated and nonregulated purposes be allocated on the basis of forecasted regulated and nonregulated use. The detection and correction of forecasting errors requires reporting of both forecasted and actual investment usage data. The Forecast of Investment Usage Report is used by carriers to submit the forecasts of investments used. The Actual Usage of Investment Report is used to submit the actual investments used. The information contained in these two reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibility to ensure that the regulated operations of the carriers do not subsidize the nonregulated operations of those same carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–8822 Filed 4–12–94; 8:45 am]

BILLING CODE 6712–01–M

Advanced Television Service Technical Subgroup Meeting

April 7, 1994.

A meeting of the Technical Subgroup of the Advisory Committee on Advanced Television Service will be held on:

April 19, 1994
9 a.m.
Commission Meeting Room (room 856)
1919 M Street, NW.
Washington, DC

The agenda for the meeting will consist of:

1. Call to Order
2. Expert Group Reports
3. Discussion of Grand Alliance System Specifications
4. Discussion of Advisory Committee Schedule
5. Other Business
6. Adjournment

All interested persons are invited to attend. Written statements may be submitted before or at the meeting. Oral statements and discussion will be permitted under the direction of the Technical Subgroup Co-Chairs.

Any questions regarding this meeting should be directed to Paul Misener at 202/828–7506, or William H. Hassinger at 202/632–6460.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–8823 Filed 4–12–94; 8:45 am]

BILLING CODE 6712–01–M

[DA 94–305]

Private Radio Bureau Seeks Comments on Daniel R. Goodman's, and Robert Chan's Requests for Rule Waivers To Extend the Construction and Loading Deadlines Applicable to Certain Conventional SMR Licenses

April 6, 1994.

Daniel R. Goodman, Court-appointed Receiver (Receiver) for Metropolitan Communications Corp., Nationwide Digital Data Corp., Columbia Communications Services Corp., and Stephens Sinclair Ltd., seeks waiver of the Commission's Rules on behalf of approximately 4000 conventional-SMR licensees ("Consumers") that were allegedly defrauded by these Receivership companies. Dr. Robert Chan seeks similar relief for the five conventional SMR licenses he acquired via two of the Receivership companies.

The Receiver requests waiver of 47 CFR 90.633 to extend the eight-month construction and operation deadline applicable to the licenses held by the Consumers. The Consumers obtained their licenses via the Receivership companies' offerings and sales of investments in SMR licenses, applications, and filing services. The Receiver pleads that, according to the Federal Trade Commission's (FTC's) Complaint filed in U.S. District Court on January 11, 1994, the Receivership companies allegedly defrauded and mislead the Consumers as to the FCC's Rules. As a result, the Consumers obtained approximately 4000 conventional SMR licenses, which are now on the verge of cancelling automatically because the stations will not be constructed within eight months from the grant date, as required by § 90.633.

The Consumers paid $7000 for each license they obtained via the Receivership companies and, according to the Receiver, could lose an aggregate sum of approximately $28 million if these licenses cancel. If the Commission grants these licensees a new eight-month period to construct, operate, and load their stations, the Receiver plans to facilitate transactions whereby stations first would be constructed and managed by existing SMR operators and then assigned. Each individual licensee may decide whether to enter any transaction presented by the Receiver.

Noting the FTC actions against the Receivership companies, Dr. Chan states that the Receivership companies he dealt with do not have the capability to construct stations in time for him to meet § 90.633. Dr. Chan therefore requests a one-year extension for each of

his five licenses, stating that he has now taken over all of the business and engineering activities for his stations in an attempt to facilitate construction and operation.

The Receiver tendered a $105 filing fee; Dr. Chan did not tender a filing fee. By requesting public comments on the instant requests, we clarify that the Commission is not ruling on the adequacy of the filing fees tendered.

The Private Radio Bureau solicits comments on all aspects of these two proposals. Comments should be filed on or before May 13, 1994. Reply comments should be filed on or before May 27, 1994. Comments and reply comments should be addressed to: Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, room 5202, STOP 1700A1, Federal Communications Commission, Washington, DC 20554.

Copies of Dr. Chan's and the Receiver's filings may be obtained from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 2100 M Street, NW., suite 140, (202) 857–3800. A copy is also available for public inspection in room 5202, 2025 M Street, NW., Washington, DC 20554.

For further information contact the Rules Branch at (202) 634–2443.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–8824 Filed 4–12–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets To Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for each of the financial institutions specified in **SUPPLEMENTARY INFORMATION.** The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estates are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Keith Ligon, Counsel, Legal Division, FDIC, 1717 H Street, NW., Washington, DC 20006. Telephone: (202) 736–0160.

SUPPLEMENTARY INFORMATION:

Financial Institutions in Receivership Determined To Have Insufficient Assets To Satisfy All Claims

Placer Bank of Commerce, #4469
Roseville, California

Valley Commercial Bank, #4479
Roseville, California

Investors Bank and Trust Company, #4547
Gretna, Louisiana

Dated: April 7, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–8800 Filed 4–12–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

UJB Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 6, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. UJB Financial Corp., Princeton, New Jersey; to merge with VSB Bancorp, Inc., Closter, New Jersey, and thereby indirectly acquire Valley Savings Bank, Closter, New Jersey.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Bancorp, Inc., Denton, Texas; to acquire 100 percent of the voting shares of Bedford National Bank, Bedford, Texas.

2. First Delaware Bancorp, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of Bedford National Bank, Bedford, Texas.

3. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Bedford National Bank, Bedford, Texas.

Board of Governors of the Federal Reserve System, April 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–8782 Filed 4–12–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC—410]

RIN 0905-ZA39

Announcement of Cooperative Agreement to Case Western Reserve University

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds to continue, on a sole source basis, a Human Immunodeficiency Virus (HIV)-Related Tuberculosis Demonstration cooperative agreement on applied drug efficacy and preventive therapy (ADEPT) with Case Western Reserve University (CWRU). Approximately $500,000 will be available in FY 1994 to support this project. It is expected the award will begin on August 1, 1994, for a 12-month budget period within a 5-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to improve the diagnosis, prevention, and treatment of tuberculosis in persons infected with HIV through demonstration and applied research. Applied research, as used in the context of this announcement, means the process of developing and evaluating practical operational approaches and solutions to tuberculosis problems.

The CDC will (1) Provide consultation and technical assistance in planning, implementing, and evaluating strategies and protocols, (2) Provide up-to-date scientific information on tuberculosis and HIV-infection and related diseases, (3) Assist in data management, analysis, and the evaluation of programmatic activities, and (4) Assist in the preparation and publication of results.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (For ordering a copy of "Healthy People 2000," see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 241(a) and 247b(k)(2)], as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to CWRU for this project. No other applications are solicited. The program announcement and application kit have been sent to CWRU.

CWRU is the most appropriate and qualified agency to provide the services specified under this cooperative agreement because:

1. In 1991, CWRU was the only applicant funded through the competitive announcement #114, ADEPT/HIV-Related Tuberculosis Demonstration. The study being conducted is a trial of preventive therapy in HIV-infected persons in Uganda; regimens being followed in the current study are novel chemotherapy regimens requiring long-term follow up of patients to determine the efficacy of these drugs. CWRU currently has enrolled more than 600 tuberculin-positive patients in the study. During the initial months of recruitment, the investigators found a significant number of immunocompromised patients unable to respond to skin test antigens (anergic). Since October 1993, these patients are being enrolled in the study to assess whether they are at even higher risk for the development of tuberculosis and whether preventive treatment would be effective. As of November 1993, 11 anergic patients were participating in the trial. Enrollment into the study is continuing; however, there will not be sufficient time in the current project period to complete the enrollment of 1200 nonanergic and 500 anergic patients and follow these patients for the 2 years necessary to collect meaningful data on the efficacy of the preventive therapy regimens. Without continuing the project for an additional 5 years, the data collected to date will be of limited usefulness in assessing the efficacy of the regimens evaluated in this study.

2. The work under this cooperative agreement will be conducted in the Republic of Uganda. Uganda has one of the highest prevalences of HIV and tuberculous dually-infected persons in the world. The CWRU project is able to enroll 20 nonanergic and 5 anergic patients each week; no other known sites have access to sufficient patients to enroll at this rate. This rate of enrollment is necessary to ensure that sufficient numbers of patients are enrolled to provide statistically-valid results within a relatively short period of time. The CWRU research team also has established relations with Ugandan institutions that should ensure the success of a high-quality trial. Results on the efficacy of preventive therapy regimens in HIV-infected persons are needed to aid in the elimination of tuberculosis in the United States, as outlined in "A Strategic Plan for the Elimination of Tuberculosis in the United States."

3. CWRU possesses proven scientific and managerial competence in treating TB patients and in conducting clinical research trials. Many of the patients in the current cohort have been followed for as long as a year with very few patients lost to follow up. CWRU has been successful in other CDC-funded clinical trials involving the long-term follow-up (2 years or more) of HIV-infected persons.

4. To date, CDC has provided over $1,000,000 to establish this cohort. Use of this cohort will be less expensive and provide more timely results than to begin enrollment of another cohort at a different site. Additionally, no other known site can provide enrollment at the rate necessary to adequately assess the treatment regimens.

5. The current spread of TB demands new methods for combating this disease. The results of this study will add significantly to the body of information on the efficacy of specific regimens in preventing tuberculosis in HIV-infected persons. The rifampin-containing regimens may provide options for preventing tuberculosis in HIV-infected persons exposed to INH-resistant organisms.

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.947, Tuberculosis Demonstration, Research, Public and Professional Education; and 93.941, Human Immunodeficiency Virus (HIV) Demonstration, Research, Public and Professional Education.

Other Requirements

Human Subjects

The applicant must comply with the Department of Health and Human Services regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Confidentiality

Applicant must have in place systems to insure the confidentiality of all patient records.

Pre- and Post-test Counseling and Partner Notification

Recipient is required to provide HIV antibody testing to determine a person's HIV infection status; therefore, they must comply with local laws and regulations and CDC guidelines

regarding pre- and post-test counseling and partner notification of HIV-seropositive patients, a copy of which will be included in the application kit. Recipient must also comply with local requirements relating to specific reportable diseases or conditions. Recipient must provide referrals for HIV diagnosis and treatment.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 410 and contact Manuel Lambrinos, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6777.

A copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the **SUMMARY** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: April 7, 1994.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–8819 Filed 4–12–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94N–0130]

Drug Export; RENOVA® (Tretinoin Emollient Cream) 0.05 Percent

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the R. W. Johnson Pharmaceutical Research Institute has filed an application requesting approval for the export of the human drug RENOVA® (tretinoin emollient cream) 0.05 percent to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that the R. W. Johnson Pharmaceutical Research Institute, Pharmaceutical Research Institute, Rt. 202, P.O. Box 300, Raritan, NJ 08869–0602, has filed an application requesting approval for the export of the human drug RENOVA® (tretinoin emollient cream) 0.05 percent to Canada. This product is used as an adjunctive agent for use in the mitigation (palliation) of fine wrinkles, mottled hyperpigmentation, and tactile roughness of facial skin in patients who do not achieve such palliation using comprehensive skin care and sun avoidance programs alone. The application was received and filed in the Center for Drug Evaluation and Research on February 18, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 3, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: April 1, 1994.

David B. Barr,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–8779 Filed 4–12–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Annual Report of Federal Advisory Committee; Notice of Filing

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committees have been filed with the Library of Congress:

Departments of Family Medicine Review Committee
Faculty Development Review Committee
Graduate Training in Family Medicine Review Committee
Predoctoral Training Review Committee
Residency Training Review Committee

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Ms. Sherry Whipple, Executive Secretary, room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Dated: April 7, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–8778 Filed 4–12–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is

publishing a notice of a new system of records, 09–25–0172, "Clinical Research: National Center for Human Genome Research, HHS/NIH/NCHGR." We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before May 13, 1994. PHS has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on March 30, 1994. This system of records will be effective 40 days from the date of publication unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESS: Please submit comments to: NIH Privacy Act Officer, Building 31, room 3B03, 9000 Rockville Pike, Bethesda, MD 20892, 301–496–2832.

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Chief, Office of Human Genome Communications, National Center for Human Genome Research, National Institutions of Health, building 38A, room 617, 9000 Rockville Pike, Bethesda, Maryland 20892, 301–402–0911.

The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to establish a new system of records: 09–25–0172, "Clinical Research: National Center for Human Genome Research, HHS/NIH/NCHGR." Established as of October 1, 1989, the National Center for Human Genome Research (NCHGR) is the focal point within the NIH and the Department of Health and Human Services for the development of research policy and long-range planning for the NIH component of the Human Genome Project. NCHGR's Division of Extramural Research funds research in laboratories throughout the country in chromosome mapping, deoxyribonucleic acid (DNA) sequencing, database development, technology development, and studies of the ethical, legal, and social implications of genetics research. NCHGR's newly established Division of Intramural Research plans to focus on technologies for finding disease genes, developing DNA diagnostics and gene therapies. The Division will serve as a hub for NIH-wide human genetics research and enhance the work of investigators in other Institutes who are searching for specific genes and studying their function in health and disease. This system of records will be used by NIH to support clinical research aimed at understanding the genetic basis of human disease, its diagnosis and treatment.

The system will comprise records that contain information identifying participants (such as name, address, Social Security number), medical records (including psychosocial evaluations), progress reports, correspondence, epidemiological data, research findings, and records on biological specimens, (e.g., blood, urine, and genetic materials). Provision of the Social Security number is voluntary.

The amount of information recorded on each individual will be only that which is necessary to accomplish the purpose of the system. The records in this system will be maintained in a secure manner compatible with their content and use. NIH and contractor staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are HHS employees, and contractors responsible for implementing the clinical research. Researchers authorized to conduct research on biological specimens will have access to the system through the use of encrypted identifiers sufficient to link individuals with records in such a manner that does not compromise confidentiality of the individual.

Records will be stored in file folders, computer tapes, computer diskettes, microfiche, and file cards. Manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

Data stored in computers will be accessed through the use of keywords known only to authorized users. Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel. Depending upon the sensitivity of the information in the record, additional safeguard measures are employed.

The routine uses proposed for this system are compatible with the stated purposes of the system. The first routine use permitting disclosure to a congressional office is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a request of the individual. The second routine use allows disclosure to the Department of Justice to defend the Federal Government, the Department, or employees of the Department in the event of litigation. The third routine use allows disclosure to contractors and subcontractors for the purpose of processing, maintaining and refining records in the system. Contracting for such services is advisable because the agency lacks necessary internal resources and because processing or refining the records using contractors will be cost-effective. The contractors will maintain and will be required to ensure that subcontractors maintain Privacy Act safeguards with respect to such records. The fourth routine use permits disclosure of a record for an authorized research purpose under specified conditions.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: March 25, 1994.

Wilford J. Forbush,

Director, Office of Management.

09–25–0172

SYSTEM NAME:

Clinical Research: National Center for Human Genome Research, HHS/NIH/NCHGR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Center for Human Genome Research, National Institutes of Health, Building 38A, room 617, 9000 Rockville Pike, Bethesda, Maryland 20892, and at hospitals, medical schools, universities, research institutions, commercial organizations, collaborating State and Federal Government agencies, and Federal Records Centers. A list of locations is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with diseases of genetic origin, normal healthy volunteers who

serve as controls for comparison with patients, relatives of patients and other individuals whose characteristics or conditions are being studied for possible genetic connections with the occurrence of the diseases under investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying participants (such as name, address, Social Security number), medical records (including psychosocial evaluations), progress reports, correspondence, epidemiological data, research findings, and records on biological specimens, (e.g., blood, urine, and genetic materials).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 287c, "National Center for Human Genome Research," stating that the purpose of NCHGR is to characterize the structure and function of the human genome, including the mapping and sequencing of individual genes, as well as planning and coordinating the research goal of the Genome project; reviewing and funding research proposals; developing training programs; coordinating international genome research; communicating advances in genome research to the public; and reviewing and funding research to address the genome project's ethical and legal issues.

PURPOSE(S):

These records are used to support clinical research aimed at understanding the role of the structure and function of the human genome in human disease, diagnosis and treatment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to affect directly the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service, based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

4. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, computer tapes and diskettes, microfiche, and file cards.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, or other identifying numbers, keywords, and parameters of individual patient health or medical record data.

SAFEGUARDS:

1. *Authorized users:* Data on computer files is accessed by keyword known only to authorized users who are NIH or contractor employees who have a need for the data in performance of their duties as determined by the System Manager. A list of authorized users will be maintained and updated periodically. Researchers authorized to conduct research on biological specimens will have access to the system through the use of encrypted identifiers sufficient to link individuals with records in such a manner that does not compromise confidentiality of the individual. Access to information is thus limited to those with a need to know.

2. *Physical safeguards:* Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Depending upon the sensitivity of the information in the record, additional safeguard measures may be employed.

3. *Procedural and technical safeguards:* Data stored in computers is accessed through the use of keywords known only to authorized users. A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office. Contractors and subcontractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the System Manager and as permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and the Department's Automated Information System Security Program Handbook, and the National Institute of

Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3(b), which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Human Genome Communications, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 617, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. The request should include: (a) Full name, and (b) appropriate dates of participation.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

Individuals who request notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's/incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify their relationship to the child/incompetent person as well as his/her own identity.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual, patient health and medical record data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–8777 Filed 4–12–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–94–3534; FR–3356–N–02]

Announcement of Funding Awards; Section 8 Assistance Under the Loan Management Set-Aside (LMSA) Program FY 1993

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding award.

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 the funding decisions made by the Department in a competition for funding under the section 8 Loan Management Set-Aside (LMSA) Program. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Susan Gray, Senior Program Analyst, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2654. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Loan Management Set-Aside program provides special allocations of Housing Assistance Payment under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. Title 24 of the Code of Federal Regulations, part 886, subpart A sets forth rules for administration of the LMSA program. Matters addressed in the LMSA regulation include:

(1) Application contents (§ 886.105),

(2) Requirements for HUD approval of applications (§ 886.107),

(3) Owner responsibilities under the program (§ 886.119), and

(4) Rules governing Federal preferences in the selection of tenants (§ 886.132).

The purpose of the competition was to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-held projects with presently or potentially serious financial difficulties.

The 1993 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on December 29, 1992 (57 FR 62130). Applications were scored and selected for funding on the basis of selection criteria contained in that notice. A total of $181,493,760 was awarded to 224 projects.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the names, addresses, and the amount of those awards are set forth at the end of this notice.

Dated: April 1, 1994.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

AWARDS FOR THE SECTION 8 ASSISTANCE UNDER THE LOAN MANAGEMENT SET-ASIDE (LMSA) PROGRAM FOR FISCAL YEAR 1993

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
Region 1:				
023–44087	Spring Meadow Apts, Springfield, MA.	Spring Meadow LP, C/O JBG Properties, Inc., 1250 Connecticut Avenue, NW, Washington, DC 20036.	116	$3,706,800
023–44133	Richards Apts, Webster, MA	Richards Apts, 52 Hartley St., Webster, MA 01570	16	530,520
023–44159	Bradford Arms, Pittsfield, MA	Bradford Arms Associates, C/O Berkshire Housing Services, 74 North Street, Pittsfield, MA 01201.	23	416,340
023–55067	Meadowbrook Village, Fitchburg, MA.	Meadowbrook Village Associates, 10 Forbes Road, Braintree, MA 02184–2696.	35	950,100
023–55165	Danube Apartments, Dorchester, MA.	Danube Associates, C/O Abrams Management Company, 621 Columbus Avenue, Boston, MA 02118.	4	182,940
017–44013	Ten Marshall House, Hartford, CT.	Ten Marshall House Associates, 10 Marshall St., Hartford, CT 06105.	21	464,940
017–44026	Branford Manor, Groton Town, CT.	Branford Manor Associates, 645 Madison Ave, New York, NY 10022.	67	1,862,280
017–44117	Washington Hts Apts, Bridgeport, CT.	1st Baptist Hsg of Brgprt, Inc., 115 Washington Ave, Bridgeport, CT 06604.	16	373,500
017–44180	Sana aka Sand Apts, Hartford, CT.	South Arsenal Neighborhd Assoc, C/O Security Properties, Westlake C, 1601 Fifth Ave, Suite 1990, Seattle, WA 98101.	15	638,100
024–44010	Rutland Manor, Dover, NH	Rutland Manor Associates, Rutland Manor Associates, 542 Central Avenue, Dover, NH 03820.	15	416,340
016–44050	Mount Vernon Apts., Woonsocket, RI.	L.W. Associates, Four Cathedral Square, Suite 1G, Providence, RI 02903.	12	286,380
016–44057	Park Plaza, Johnston, RI	Johnston Equities Associates, P.O. Box 6684, Providence St, RI 02940.	18	457,560
016–44059	Charles Place, Johnston, RI	Charles Place Associates, 460 Charles Street, Providence, RI 02904.	68	1,502,640
016–44068	Cathedral Square I A, Providence, RI.	Cathedral Square Associates, 4 Cathedral Square, Providence, RI 02903.	5	107,400
016–44086	Broadway Plaza Apart, Providence, RI.	Broadway Plaza, Associates, 402 Pontiac Ave, Cranston, RI 02910.	14	444,360
Region 2:				
014–35068	Princeton Court Apts, Amherst Town, NY.	Princeton Housing Associates, One Towne Centre, Amherst, NY 14228.	143	3,786,300
035–44802	Acacia-Lumberton Man, Lumberton Twp., NJ.	Acacia-Lumberton Manor, Inc., 902 Jacksonville Road, Burlington, NJ 08016.	86	1,473,240
Region 3:				
052–44017	Bay Ridge Gardens, Annapolis, MD.	Angelo F. Munafo L.P., 108 W. Timonium Road, Suite 201, Timonium, MD 21093.	52	1,190,040
052–44019	Meadowood TH I, Edgewood, MD.	Meadowood Associates Ltd, National Housing Partnership, 11410 Isaac Newton Sq. North, #200, Reston, VA 22090–5012.	31	730,980
052–44071	Clay Courts, Baltimore, MD	Clay Courts Associates Ltd Ptr, National Housing Partnership, 11410 Isaac Newton Sq. North, #200, Reston, VA 22090–5012.	23	984,180
052–44081	Meadowood TH II, Edgewood, MD.	Meadowood II Associates L.P., National Housing Partnership, 11410 Isaac Newton Sq. North, #200, Reston, VA 22090–5012.	42	1,295,040
052–44137	Abbott House, Columbia, MD	Columbia Cedar Ltd Partnership, 10015 Old Columbia Rd, Suite K145, Columbia, MD 21046.	30	799,680
052–44145	Meadowood TH III, Edgewood, MD.	Meadowood III Associates, L.P., National Housing Partnership, 11410 Isaac Newton Sq. North, #200, Reston, VA 22090–5012.	136	3,828,540
052–44156	Chapel NDP, Baltimore, MD	Chapel NDP Limited Partnership, National Housing Partnership, 11410 Isaac Newton Sq. North, #200, Reston, VA 22090–5012.	55	2,355,000
045–44008	Berkeley Gardens, Martinsburg, WV.	Berkeley Gardens Limited Ptnsp, 12250 Rockville Pike, Suite 200, Rockville, MD 20852.	9	189,900
034–44027	Eastside Apartments, Nanticoke, PA.	Nanticoke UAW Housing Co., 16 Commerce Drive, Cranford, NJ 07016.	15	349,920
034–44105	College Park Apts., Carlisle, PA	College Park Apts. Ltd., National Housing Partnership, 11410 Isaac Newton Sq, North, #200, Reston, VA 22090–5012.	117	2,892,120
034–44805	Willow Terrace, Lebanon, PA	Community Homes of Lebanon, 800 Willow Street, Lebanon, PA 17042.	5	77,100
034–55004	Marshall Square, Philadelphia, PA.	Phila. Hsg. Development Corp., 1234 Market Street, 10th Floor, Phila., PA 19107.	11	389,100
034–SH011	Casa Enrico Fermi, Philadelphia, PA.	Casa Enrico Fermi, Inc., 1300 Lombard Street, Philadelphia, PA 19147.	118	2,326,200

AWARDS FOR THE SECTION 8 ASSISTANCE UNDER THE LOAN MANAGEMENT SET-ASIDE (LMSA) PROGRAM FOR FISCAL YEAR 1993—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
033–35157	Belmont Heights Apts., Stonycreek TWP, PA.	Belmont Heights Associates, Paul T. Cain, General Partner, 1558 Hastings Mill Road, Pittsburgh, PA 15241.	9	185,220
033–35199	Leo Meyer Manor, McKees Rocks, PA.	Leo Meyer Manor, Inc., 1015 Church Avenue, McKees Rocks, PA 15136.	44	1,524,000
033–44002	Penn Circle Towers, Pittsburgh, PA.	Penn Circle Tower Development, 3038–C North Federal Highway, Ft. Lauderdale, FL 33306.	15	429,900
033–44006	Logan Hills Apts., Altoona, PA	Logan Hills Associates, 3038–C North Federal Highway, Ft. Lauderdale, FL 33306.	27	476,160
033–44007	East Mall Apts., Pittsburgh, PA .	East Mall Associates, 3038–C North Federal Highway, Ft. Lauderdale, FL 33306.	26	684,120
033–44023	Evergreen Manor II, Altoona, PA	Altoona Evergrn. Manors, Inc. II, Improved Dwellings for Altoona, Inc., P.O. Box 592, Altoona, PA 16603.	7	130,380
033–44030	Evergreen Manors I, Altoona, PA.	Altoona Evergreen Manors, Inc., Improved Dwellings for Altoona, Inc., P.O. Box 592, Altoona, PA 16603.	10	179,760
033–44036	Thomas Campbell Apts., South Strabane Twp, PA.	Thomas Campbell Apts., Inc., 850 Beech Street, Washington, PA 15301.	10	154,980
033–44063	Sunnyslope Apts., Chester Hill, PA.	Philipsburg UAW Housing Company, 3555 Washington Road, Pittsburgh, PA 15317.	24	575,640
033–44079	Shenango Park Apts., Sharon, PA.	Shenango Park Associates, 4415 Fifth Avenue, Pittsburgh, PA 15213.	13	279,660
033–44082	Linden Grove, East Pittsburgh, PA.	Linden Grove Associates Ltd., Real Property Services Corp., 1935 Camino Vida Roble, Carlsbad, CA 92008.	6	127,080
033–44142	Leechburg Gardens, Penn Hills, PA.	Leechburg Gardens Associates, 753 Allegheny River Blvd., Verona, PA 15147.	15	443,460
033–55002	East Hills Park Apts., Pittsburgh, PA.	East Hills Park Apartments, 901 Elizabeth Street, Pittsburgh, PA 15221.	24	650,760
033–55007	East Liberty Gardens, Pittsburgh, PA.	East Liberty Housing, Inc., 220 Larimar Avenue, Pittsburgh, PA 15206.	55	1,451,580
051–44112	Fair Oaks, Henrico County, VA .	Airport Drive Associates, Virginia Management Group, GP, 168 Business Park Drive, VA Beach, VA 23501.	40	999,000
051–44154	Churchland North, Portsmouth, VA.	APCO No 16, Ltd., Mr. Phil Hightower, 959 Quail Run Quay, VA Beach, VA 23452.	80	1,830,300
000–35177	Stanton Wellington, Washington, DC.	Stanton Wellington Assoc., Ltd., C/O Castle Management, 2549 Evans Road, SE., Washington, DC 20020.	122	4,891,800
000–44098	Gibson Plaza, Washington, DC .	1st Rising Mt Zion Baptist Church, 606 N Street, NW., Washington, DC 20001.	36	1,049,040
000–44147	Loudoun House, Leesburgh, VA	Loudoun House Ltd Ptnrshp, C/O NCHP, 1225 Eye Street NW., Washington, DC 20005.	41	1,263,960
000–44148	Immaculate Conception, Washington, DC.	Immaculate Conception Assoc. C/O Greentree Associates, 1201 Seven Locks Road, Ste 310, Rockville, MD 20854.	57	2,072,400
000–44179	Glenn Arms, Washington, DC	Security Management Co., 437 West Diamond Avenue, Suite 103, Gaithersburg, MD 20877.	45	1,848,060
000–55010	Ridgecrest Heights, Washington, DC.	Pollin Memorial Assoc., Ltd PT, 881 Alma Real Drive, Suite 205, Pacific Pali, CA 90272.	79	2,855,340
000–55013	Parkside Terrace, Washington, DC.	Parkside Terrace Co., Ltd., C/O Polinger Company, 5530 Wisconsin Avenue, Chevy Chase, MD 20815.	100	3,631,020
000–SH015	Takoma Towers, Takoma Park, MD.	Montgomery County Revenue Auth, 211 Monroe Street, Rockville, MD 20850.	56	1,242,240
Region 4:				
061–35281	Wiloaks Apartments, Gwinnett County, GA.	Gwinnett Gardens, Ltd., John Luciani & Bernard Rodin, One Executive Drive, Fort Lee, NJ 07024.	16	507,840
061–44005	Fairburn & Gordon I, Atlanta, GA.	Fairburn & Gordon Associates, National Housing Partnership, 11410 Isaac Newton Sq, North, #200, Reston, VA 22090–5012.	23	570,960
061–44056	Brownlee Court, Atlanta, GA	Susan C. Lachin, 40 Marietta Street, Atlanta, GA 30303	16	363,720
061–44091	Carriage House Atlan, Atlanta, GA.	Max A. Thurston, Gen Partner, Carriage House of Atlanta, Ltd., P.O. Box 40177, Indianapolis, IN 46240.	33	688,200
061–44097	Tall Pines, La Grange, GA	Tall Pines Associates, Mr. Lary Chkoreff, General Partner, 5505 Interstate North Pkwy., NW., Atlanta, GA 30328.	15	346,800
061–44124	Northgate Village, Columbus, GA.	Northgate Village Ltd., National Housing Partnership, 11410 Isaac Newton Sq, North, #200, Reston, VA 22090–5012.	13	242,820
061–44197	Blakewood Apartments, Statesboro, GA.	Insignia Management Corp., One Shelter Place, Greenville, SC 29601.	6	116,160
061–44207	Clairmont Oaks, Decatur, GA	Clairmont Oaks, Inc., Ms. Jane Hoover, President & CEO, 441 Clairmont Avenue, Decatur, GA 30030.	18	384,120
061–44244	Madison Apts, Savannah, GA ...	BFTG Madison South, Inc., 101 Arch Street, Boston, MA 02110	11	247,440
061–44245	Paradise Carrollton, Carrollton, GA.	Paradise Carrollton Apts, Russell Property Management Company, 504 Fair Street, SW., Atlanta, GA 30313.	8	163,440

AWARDS FOR THE SECTION 8 ASSISTANCE UNDER THE LOAN MANAGEMENT SET-ASIDE (LMSA) PROGRAM FOR FISCAL YEAR 1993—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
061–44801	Philips Prsbytn Twr, Atlanta, GA	Philips Presbyterian Tower, Mr. Charles F. Kreischer, Ex. Dir., 218 E. Trinity Place, Decatur, GA 30030.	59	1,102,680
061–55016	Allen Temple II, Atlanta, GA	Allen Temple Development, Inc., 1625 Simpson Road, NW., Atlanta, GA 30314.	10	203,400
061–55024	Allen Temple III, Atlanta, GA	Allen Temple Development Inc., 1625 Simpson Road, NW., Atlanta, GA 30314.	17	319,260
061–55030	Hollywood West, Atlanta, GA	H.J. Russell, 504 Fair Street, SW., Atlanta, GA 30313	10	225,840
061–55058	Martin Manor, Atlanta, GA	Martin Manor Apartments, Ltd., Russell Property Management Company, 504 Fair Street, SW., Atlanta, GA 30313.	6	150,480
061–92004	Personality TH, Smyrna, GA	2030 Spacecoast Parkway, Inc., C/O Gateway Management Company, 3190 NE Expressway Access Rd S/400, Atlanta, GA 30341.	27	669,600
062–35329	Hickory Hills Apts., Birmingham, AL.	Hickory Hills, Ltd., 7701 Forsyth Blvd., suite 900, St. Louis, MO 63105–1813.	25	574,500
062–35337	Monroe Avenue, Birmingham, AL.	Monroe Assoc. Ltd., 5350 Poplar Avenue, Suite 400, Memphis, TN 38119.	25	715,500
062–44068	Courtview Towers, Florence, AL	Courtview Towers, Ltd., 835 Lowcountry Blvd., P.O. Box 1699, Mt. Pleasant, SC 29465.	25	517,500
062–44081	Forrester Garden, Tuscaloosa, AL.	Forrester Gardens, Ltd., 1231 Greenway Drive, suite 1000, Irving, TX 75038.	24	498,120
054–35265	Filbin Creek, North Charleston, SC.	George E. Campsen, Jr., C/O Darby Development Co., Inc., 4142 Dorchester Road, Charleston, SC 29405.	22	604,560
054–35323	Steeplechase, Aiken, SC	Security Pacific Inc., 2225 4th Avenue, suite 200, Seattle, WA 98121.	19	566,400
054–44029	Dillon Gardens, Dillon, SC	Todd Walter, 3830 Forest Drive, suite 206, Columbia, SC 29204	8	131,700
054–44063	Walhalla Gardens I, Walhalla, SC.	Walhalla Gardens, LP, P.O. Box 1089, Greenville, SC 29602	7	147,780
054–44107	Landau Apartments, Clinton, SC	Amreal Corp, P.O. Box 1089, Greenville, SC 29206	60	1,110,720
054–44127	Laurens Glen, Laurens, SC	Laurens Glen LP, P.O. Box 779, Macon, SC 31202–0779	14	238,440
053–44158	Hilltop Apartments, Hickory, NC	Hilltop Limited Partnership, National Housing Partnership, 11410 Isaac Newton Sq, North, #200, Reston, VA 22090.	24	634,920
053–44191	Valley Arms, Statesville, NC	Valley Arms, Ltd., 200 West Capitol, suite 1200, Little Rock, AR 72201.	29	627,180
053–44202	Holly Oak Park, Shelby, NC	Harbell I, Ltd., National Housing Partnership, 11410 Isaac Newton Sq North, #200, Reston, VA 22090–5012.	7	155,220
053–44208	Ramblewood Apts, Shelby, NC .	New Ramblewood, Ltd., C/O Boston Financial Prop Mgmt, 101 Arch Street, Boston, MA 02110–1106.	14	273,180
053–44237	Greenhaven, Charlotte, NC	Greenhaven Townhouses, ALP, 5350 Poplar, suite 400, Memphis, TN 38119.	8	201,840
053–44257	Newgate Gardens Aprts, High Point, NC.	Newgate Limited Partnership, C/O Westminster Company, G.P., P.O. Box 26560, Greensboro, NC 27415–6560.	29	658,800
065–44004	Westwick Apts. I, Jackson, MS .	Westwick II, Ltd., 4895 Old Towne Parkway, #102, Marietta, GA 30068.	10	288,840
063–44005	Horizon House Apts, Gainesville, FL.	Ellen Kirkpatrick, P.O. Drawer K, Gainesville, FL 32602	28	922,320
063–44006	Sunset Apartments, Gainesville, FL.	Ellen Kirkpatrick, P.O. Drawer K, Gainesville, FL 32602	25	781,260
063–44018	Glen Springs Manor, Gainesville, FL.	Bates Realties, 12 West Franklin Street, Quincy, FL 32351	7	227,640
063–44024	Village Green, Gainesville, FL ...	Village Green Ltd, National Housing Partnership, 11410 Isaac Newton Sq North, #200, Reston, VA 22090–5012.	10	250,440
063–44037	Forest Green, Gainesville, FL ...	Forest Green Ltd, National Housing Partnership, 11410 Isaac Newton Sq, North, #200, Reston, VA 22090–5012.	7	194,700
063–44041	Sutton Place, Ocala, FL	Hickory Ridge Assoc. Ltd, National Housing Partnership, 11410 Isaac Newton Sq, North, #200, Reston, VA 22090–5012.	6	177,540
066–35140	Boardwalk Apts, Fort Myers, FL	Tarpon Bay Properties, 1177 Third Street South, suite 201B, Naples, FL 33940.	30	901,200
066–44022	Town Park Plaza S., Miami, FL .	Town Park Plaza South, Inc., 1780 NW 5th Avenue, Apartment B, Miami, FL 33136.	27	644,700
066–44040	Canterbury House Apt, Lauderdale Lakes, FL.	Canterbury House Apt. Ltd, 2951 28th Street, suite 2040, Santa Monica, CA 90405.	8	275,160
066–44057	Royal Manor Apts, Fort Myers, FL.	Royal Manor Ltd, 314 Lakeside Road, Syracuse, NY 13209	18	367,740
067–44036	Jackson Heights Est, Tampa, FL.	Jackson Heights Associates, 1935 Camino Vida Roble, Carlsbad, CA 92008.	18	440,100
067–44062	Arlington Apts, Cocoa, FL	CME Church Arlington Apts, 1301 Jackson Street, Cocoa, FL 32922.	40	856,800
067–44145	Episcopal Catholic, Winter Haven, FL.	Episcopal Catholic Apts., Inc, 500 Avenue L, NW, Winter Haven, FL 33881.	54	836,400

AWARDS FOR THE SECTION 8 ASSISTANCE UNDER THE LOAN MANAGEMENT SET-ASIDE (LMSA) PROGRAM FOR FISCAL YEAR 1993—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
067–55025	Tampa Park Apts–II, Tampa, FL	Tampa Park Apts., Inc., 1417 Tampa Park Plaza, Tampa, FL 33605.	34	590,040
067–SH042	College Arms Towers, DeLand, FL.	College Arms Towers, Inc, 101 N. Amelia Ave, Deland, FL 32724.	56	922,560
087–44044	Townview Terrace II, Knoxville, TN.	Townview Terrace II Ltd., 1600 Riverview Tower, 900 South Gay Street, Knoxville, TN 37902–1810.	37	848,760
083–35272	Cypress Point, Owensboro, KY .	PTM Development, 1101 Burlew Blvd., Bldg. 3, Owensboro, KY 42303.	14	344,800
083–35419	Park Regency, Owensboro, KY .	Park Regency Apts., P.O. Box 2150, Owensboro, KY 42302	41	951,240
083–44097	Minnich Avenue, Paducah, KY ..	Rental Housing Inc., P.O. Box 7744, Paducah, KY 42002–7744 .	9	157,920
083–44106	Hickory Hill Manor, Frankfort, KY.	Hickory Hill Manor Ltd., 1755 E. M. L. King Blvd., Los Angeles, CA 90058.	14	277,680
083–44805	Baptist Towers, Louisville, KY ...	Baptist Towers Inc., 1014 S. Second St., Louisville, KY 40203 ...	35	489,780
081–44029	Ridgecrest Apts., Memphis, TN .	Associated Investor of Memphis, 5100 Sanderlin St. 1600, Memphis, TN 38117.	22	465,060
081–55002	Watkins Manor Apts., Memphis, TN.	Watkins Properties, Ltd, 2951 28th Street, suite 2040, Santa Monica, CA 90405.	27	413,100
Region 5:				
071–35594	46th Vincennes Apts, Chicago, IL.	46th Vincennes Limited Ptnrshp, 1 E. Wacker, suite 2030, Chicago, IL 60601.	11	466,500
071–44026	Whispering Oaks, II, Waukegan, IL.	Whispering Oaks Phase II Lmt, 2951 28th Street suite 2040, Santa Monica, IL 90405.	73	2,025,060
071–44101	Bradford Court Apts, Addison, IL	Swifton Commons Associates, C/O Sadoff Iron & Metal, P.O. Box 1135, Fond Du Lac, WI 54935.	36	1,137,660
071–55108	Noble Square Coop, Chicago, IL	Noble Square Cooperative, 1165, N. Milwaukee Ave, Chicago IL 60622.	60	1,461,600
071–55185	Whispering Oaks I, Waukegan, IL.	Whispering Oaks Phase I Lmt, Pt, 2951 28th Street, suite 2040, Santa Monica, CA 90405.	83	2,409,480
046–35254	Beechwood Villa, Cincinnati, OH	Beechwood Villa Partnership, 1225 Dublin Road, Dublin, OH 43215–1024.	14	393,960
042–44067	Valley View Apts., Wooster, OH	Valley View Associates, 300 Washington Ave., suite 102, Lorain, OH 44052.	15	330,120
042–44071	Covenant House, Toledo, OH ...	Covenant House, Inc., 702 N. Erie Street, Toledo, OH 43604	31	555,540
042–44085	College Village, Oberlin, OH	College Village Associates, 300 Washington Ave, suite 102, Lorain, OH 44052.	6	114,960
042–44108	Shamrock Place, Painesville, OH.	Shamrock Place Ltd., C/O AEC Mngt Co., 600 Beta Drive Cleveland, OH 44143.	7	150,600
043–44010	Jaycee Arms Apt., Columbus, OH.	North Cols, Jaycee Hsg Bd, Inc., North Cols. Jaycee Hsg. Bd, Inc., 5905 Beechcroft Rd., Columbus, OH 43209.	123	2,450,160
043–44035	Mapleview Terrace I, Columbus, OH.	Mapleview Terrace I, Mapleview Terrace I, 400 South Fifth Street, Suite 400, Columbus, OH 43215.	39	738,360
043–44060	Amberly Square Columbus, OH	Amberly Square Apartments, Amberly Square Apartments, 2730 Brandy Drive, Columbus, OH 43232.	47	1,065,060
043–44065	Crossroads Apts., Columbus, OH.	Tuskegee Alumni, Hsg. Fdn, Inc., C/O Arnold White, Esq., 844 South Front Street, Columbus, OH 43206.	16	424,320
043–44074	Mapleview Terrace II, Zanesville, OH.	Mapleview Terrace II, Mapleview Terrace II, 400 South Fifth St., suite 400, Columbus, OH 43215.	34	625,500
044–35478	Turtle Creek, Pontiac, MI	Paul H. Pfleger, General Partner, WeltonPerry Lmtd, 1601 5th Ave #1900, Seattle, WA 98101.	30	1,165,200
044–44350	River Towers, Detroit, MI	River Towers, 32605 W. 12 Mile Rd #350, Farmington Hills, MI 48334.	100	2,710,800
073–35162	Briarwood Village, Elkhart, IN	Briarwood Village Apartments, C/O Gene B. Glick Co., P.O. Box 40177, Indianapolis, IN 46240.	30	780,480
073–35164	Village I, Mishawaka, IN	Village I Apartments, C/O Gene B. Glick Co., P.O. Box 40177, Indianapolis, IN 46240.	30	781,800
073–35220	Village II, Mishawaka, IN	Village II Apartments, C/O Gene B. Glick Co., P.O. Box 40177, Indianapolis, IN 46240.	30	781,800
073–44217	Foxhill Apartments, Indianapolis, IN.	Foxhill Manor Apartments, 2339 Foxhill Court, Indianapolis, IN 46218.	10	243,300
073–44287	Covert Village Evansville, IN	Covert Village Apts Partnership, P.O. Box 19409, Indianapolis, IN 46219.	34	725,160
073–44301	Arrowhead Estates I, Peru, IN ...	Roy L. Prock, 8355 Rockville Road, Indianapolis, IN 46234	14	291,960
073–44395	Capri Meadows I, Bluffton, IN ...	Capri Meadows Associates, C/O Gene B. Glick Co., P.O. Box 40177, Indianapolis, IN 46240.	18	379,020
073–55108	Brunswick Village, Gary, IN	Edward Gray Corp., One Graycor Drive, Homewood, IL 60430 ...	30	746,820
075–44053	Evergreen Square I, Milwaukee, WI.	Evergreen Square Phase I, 1123 N. Astor Street, Milwaukee, WI 53202.	52	764,400
075–44060	Evergreen Square II, Milwaukee, WI.	Evergreen Square Phase II, 1123 N. Astor Street, Milwaukee, WI 53202.	48	705,600

AWARDS FOR THE SECTION 8 ASSISTANCE UNDER THE LOAN MANAGEMENT SET-ASIDE (LMSA) PROGRAM FOR FISCAL YEAR 1993—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
075–44061	Evergreen Square III, Milwaukee, WI.	Evergreen Square Phase III, 1123 N. Astor Street, Milwaukee, WI 53202.	47	690,900
075–55003	Northport Apartments, Madison, WI.	Northport Apartment Corp., 1714 Northport Drive, #5, Madison WI 53714.	6	175,320
075–55004	Teutonia Apartments, Milwaukee, WI.	6800 Teutonia Corporation, 3730 W. Greentree Road, Milwaukee, WI 53209.	2	54,360
075–55005	Packer Apartments, Madison, WI.	Packer Apartment Corporation, 1714 Northport Drive, #5, Madison, WI 53704.	12	379,500
092–35211	Concord Square, St. Paul, MN ..	Bluff Estates II Ltd Partnersh, 214 East Armour Boulevard, suite 102, Kansas City, MO 64111.	16	511,680
092–44007	Skyline Towers, St. Paul, MN	Skyline Towers Company, 5151 Edina Industrial Blvd., suite 600, Edina, MN 55439–3023.	100	2,106,000
092–44036	Torre De San Miguel, St. Paul, MN.	Torre De San Miguel Homes Ltd, 328 West Kellogg Boulevard, St. Paul, MN 55102.	18	524,820
092–44102	Vista Village, St. Paul, MN	Rio Vista Non-Profit Hsg, Inc, 328 West Kellogg Boulevard, St. Paul, MN 55102.	7	154,560
092–SH108	Central Towers, St. Paul, MN	Central Towers, Inc., 20 East Exchange Street, St. Paul, MN 55101.	63	909,180
Region 6:				
112–55022	Pleasant Village, Dallas, TX	Pleasant Village Apts. Ltd., 1412 Main Street, suite 2100, Dallas, TX 75202.	30	720,000
112–55066	Grove Village, Dallas, TX	Grove Village Apartments, Ltd., 1412 Main Street, suite 2100, Dallas, TX 75202.	43	915,000
112–44116	Meadow Village Apts, Temple, TX.	Meadow Village, Ltd., 3038 N. Federal Hwy., Fort Lauderdale, FL 33306–1487.	23	571,980
113–44010	Waldemar, Apts., Haltom City, TX.	Waldemar Apartments, Ltd. 2509 Minnis Drive, Fort Worth, TX 76117.	25	391,800
113–44063	Cleburn Plaza, Cleburne, TX	Cleburn Plaza Apartments Ltd, 2320 Highland Avenue suite 175, Birmingham, AL 35205.	22	438,000
133–44033	Park Village, Big Spring, TX	Big Spring Park Village Apt, Ltd, 1601 5th Ave., suite 1900, Seattle, WA 98101.	19	414,120
133–55006	Villa Del Norte Apts, Lubbock, TX.	Valla Del Norte II Assoc., 1601 Fifth Ave., suite 1900, Seattle, WA 98101.	8	189,000
114–35163	Timberidge, Lufkin, TX	Timberidge Associates, Ltd., Timberidge Apartments, 2650 N. Military Trail, Ste. 350, Boca Raton, FL 33431.	31	761,580
114–35201	Bray's Village, Houston, TX	Bray's Village Assoc. Ltd., R–T Management Company, Inc., 247 Maple Street, Box 2017, Attleboro, MA 02703.	43	976,500
114–35275	Coolwood Oaks, Houston, TX ...	Herbert J. Zieben, 3200 Wilcrest, suite 380, Houston, TX 77042	84	2,616,000
114–44024	Parker Square, Houston, TX	Southward Ltd. Partnership, National Housing Partnership, 11410 Isaac Newton Sq North, #200, Reston, VA 22090–5012.	27	683,160
114–44026	Cedarwood Huntsville, TX	Cedarwood Associates, Ltd., Cedarwood Associates, Ltd., 2650 N. Military Trail, Ste. 350, Boca Raton, FL 33431.	24	627,660
114–44031	Aristocrat, Houston, TX	Houston Aristocrat Apt., Ltd., Houston Aristocrat Apartments, Ltd., 11410 Isaac Newton Square North, Reston, VA 22090–5012.	8	219,840
114–44073	Vista Baywood, La Porte, TX	Vista Baywood Housing, Ltd., Vista Baywood Housing, Ltd., 1776 Woodstead Court, Ste. 218, Houston, TX 77380.	14	333,480
082–44020	Southwest Apartments Little Rock, AR.	Southwest Apartments, Ltd., C/O Coffman Investments Co., Inc., 200 West Capitol, suite 1200, Little Rock, AR 72201.	4	67,200
082–44026	Willow Bend I, Jacksonville, AR	Willow Bend, Inc., C/O RPM Management Company, P.O. Box 7300, Little Rock, AR 72217.	6	138,780
082–44027	Willow Bend II, Jacksonville, AR	Willow Bend, Inc., C/O RPM Management Company, P.O. Box 7300, Little Rock, AR 72217.	5	99,000
082–44061	Grandview Apartments, Fayetteville, AR.	Grandview Apartments, Ltd., c/o NHP Property Management, 1231 Greenway Drive, suite 1000, Irving, TX 75038.	8	167,640
115–44017	Southridge Apts., Austin, TX	Southridge Apts., Ltd., National Housing Partnership, 11410 Isaac Newton Sq North, #200, Reston, VA 22090–5012.	34	869,220
115–44169	Walnut Manor Apts., San Antonio, TX.	Walnut Manor, Ltd., 1412 Main Street, #2100, Dallas, TX 75202	27	477,900
059–44007	Timbers Apartments, West Monroe, LA.	Timbers Associates, L.P., P.O. Box 60484, Nashville, TN 37206	13	177,180
059–44021	Northwood II, Shreveport, LA	Northwood Apartments Phase II, 2320 Highland Avenue #175, Birmingham, AL 35205.	33	727,620
118–44005	Plaza Hills East, Tulsa, OK	First Plaza Hills Ltd., 8235 Douglas Avenue, Dallas, TX 75225 ...	50	1,060,200
118–44025	Riverview Village, Tulsa, OK	Riverview Village, Inc., 930 W. 23rd Place, Tulsa, OK 74107	14	280,140
118–44075	Beard Estates, Wilburton, OK ...	Beard Estates Ltd., c/o Barbara Brown, 703 McKinney #430, Dallas, TX 75202.	30	618,600
118–44102	Brookwood Apartments, Owasso, OK.	First Brookwood Ltd., 8235 Douglas Avenue, Dallas, TX 75225 ..	13	258,240

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FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
118–55012	Normandy Apartments, Tulsa, OK.	Normandy Apartments, Ltd., 2680 West I–40, Oklahoma City, OK 74135.	47	937,980
Region 7:				
084–44066	Century 37 Apts., Kansas City, MO.	Century 37 Apartments Ltd., Robert Rubin, General Partner, 1020 Pennsylvania, Kansas City, MO 64105.	15	310,260
084–44109	Brighton Place, Kansas City, MO.	Brighton Place Inc., Father Michael Caruso, 2039 Bennington, Kansas City, MO 64126.	6	106,920
084–55031	Valley View Apts., Kansas City, MO.	Orlando Investment Corporation, 3108 East 9th Street, Kansas City, MO 64124.	55	1,320,480
084–55043	Homestead Apartments, Kansas City, MO.	Maria Devinki, 4901 Wornall, suite 10, Kansas City, MO 64112–2424.	31	551,580
102–44032	Wind Ridge Apts., Wichita, KS ..	Century Pacific IX, 1925 Century Park East, suite 1760, Los Angeles, CA 90067.	77	1,431,840
085–44804	Covenant House I, St. Louis County, MO.	B'nai B'rith Covenant House, IN, #10 Millstone Campus, St. Louis, MO 63141.	45	730,320
085–58507	Harlan Court Apts., St. Louis, MO.	Hamilton Associates, Ltd., 4895 Olde Towne Parkway #102, Marietta, GA 30068.	6	109,800
Region 8:				
093–44047	Havre Eagles Manor, Havre, MT	Havres Eagles Manor, 20 West Third St., Havre, MT 59501	40	549,600
093–44803	Missoula Manor, Missoula, MT ..	Missoula Manor Homes, 909 W. Central, Missoula, MT 59801 ...	38	715,800
101–44002	Sakura Square, Denver, CO	Tri-State Buddhist, 1255 19th Street, Denver, CO 80202	24	450,000
101–44024	Sunset Park—VOA, Denver, CO	Century Pacific Housing Fund I, VOA/Sunset Park Ltd., 1865 Larimer St., Denver, CO 80202.	52	810,420
101–44026	Golden Spike, Denver, CO	Colo. Veterans & Retired RR, 3000 W. Yale Avenue, Denver, CO 80219.	60	738,900
101–44101	Fairview Apts, Aurora, CO	Fairview Apts LDP, 28777 Northwestern Hwy, Southfield, MI 48034.	30	714,840
101–44123	17th Street Redev., Denver, CO	Ralph Arceri, Arlend Realty Corp., P.O. Box 536, Redondo Beach, CA 90277.	12	332,640
101–44150	Mitchell 66, Denver, CO	Bertram Bruton, Mitchell 66 Associates, 2001 York Street, Denver, CO 80205.	10	266,520
101–44151	East Village, Denver, CO	East Village Co., 5000 S. Quebec St., suite 400, Denver, CO 80237–2707.	50	1,108,560
Region 9:				
125–35046	Shelter Creek, Las Vegas, NV ..	Decatur Arms, Ltd. Partnership, 1601 Fifth Avenue, suite 1900, Seattle, WA 98101.	20	634,800
125–35054	Lakeview, Reno, NV	Lakeview Apartments, 481 Via Hidalgo, Greenbrae, CA 94904 ...	127	4,268,700
125–35071	Walker House, Las Vegas, NV ..	Walker House Ltd Partnership, 481 Via Hidalgo, Greenbrae, CA 94904.	37	1,476,600
122–35590	High Valley Apts, Lancaster, CA	Edward Devore, 17128 Ranchost St., Encino, CA 91316	64	3,094,800
122–35609	Kilgore Manor, Los Angeles, CA	S.B. Community Homes, Inc., 2412 Griffith Ave, Los Angeles, CA 90011.	51	1,305,000
122–SH083	E. Victor Villa, Los Angeles, CA	E. Victor Villa Inc., 1308 E. 50th Street, Los Angeles, CA 90011	42	675,360
123–35149	Campbell Terrace, Tucson, AZ .	Sunbriar Apartment Associates, 113 Bon Aire Circle West, Suffern, NY 10901.	39	899,700
123–SH005	Kivel Manor, Phoenix, AZ	Kivel Manor, 3020 N. 36th Street, Phoenix, AZ 85018	18	383,760
136–35541	Shade Tree Apts, Sacramento, CA.	College Oak Investors, 4950 Hamilton Ave, suite 104, San Jose, CA 95130.	150	4,473,000
136–35573	Discovery Park I, Sacramento, CA.	Lincoln Natomas Associates Ltd, 310 N. Westlake Blvd, suite 200, Westlake Vil, CA 91362.	33	1,423,620
136–35580	Discovery Park II, Sacramento, CA.	Lincoln Discovery Park Assoc, 310 N. Westlake Blvd, suite 200, Westlake Vil, CA 91362.	33	1,188,000
136–35630	Discovery Park III, Sacramento, CA.	Lincoln Property Co., 310 N. Westlake Blvd, suite 200, Westlake Vill, CA 91362.	37	1,332,000
136–35631	Countrywood Village, Sacramento, CA.	Lincoln Countrywood Assoc Ltd, 310 N. Westlake Blvd, suite 200, Westlake Vil, CA 91362.	27	1,164,780
136–35651	Discovery Park IV, Sacramento, CA.	Lincoln Property Co., 310 N. Westlake Blvd, suite 200, Westlake Vill, CA 91362.	13	553,020
121–44014	Valley Oak Park I, Santa Rosa, CA.	Carpenters Housing Corp, 2600 Northcoast St., Santa Rosa, CA 95403.	28	652,260
121–44027	All Hollows Apts, San Francisco, CA.	All Hollows Associates, National Housing Partnership, 11410 Isaac Newton Sq North, #200, Reston, VA 22090–5012.	10	390,600
121–44091	Vista Del Monte, San Francisco, CA.	Vista Del Monte Ltd, 8530 Wilshire Blvd, suite 400, Beverly Hills, CA 90211.	39	1,591,020
121–44135	Monument Arms, Fairfield, CA ..	Monument Arms Inc., 261 E. Alaska Ave., Fairfield, CA 94533 ...	16	512,340
121–44142	John F. Kennedy II, Richmond, CA.	John F. Kennedy II, Ltd., 150 Executive Park Blvd., suite 2600, San Francisco, CA 94134.	15	458,280
121–44147	Valley Oak Park II, Santa Rosa, CA.	Carpenters Housing Corp, 2600 Northcoast St., Santa Rosa, CA 95403.	19	474,540

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FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
121–44152	Del Monte Manor, Seaside, CA .	Del Monte Manor, Inc., 1466 Yosemite Street, Seaside, CA 93955.	19	445,320
121–44178	Rose of Sharon, Oakland, CA ...	Interdenominational Gospel Chr, 1600 Lakeshore Blvd, Oakland, CA 94612.	18	374,220
121–44246	Hilarita Apts, Tiburon, CA	Hilarita Apts A Limited Ptrsp, 100 Neds Way, Tiburon, CA 94920	9	290,880
121–44304	Burbank Heights, Sebastopol, CA.	Sebastopol Area Housing Corp., 7777 Bodega Ave., Sebastopol, CA 95472–3570.	42	687,420
121–44337	Kings Canyon, Fresno, CA	Goldrich & Kest, 5150 Overland Ave., Culver City, CA 90231–3623.	11	297,420
121–44383	Lakeview I, Fresno, CA	Griffith Limited Partnership, National Housing Partnership, 11410 Isaac Newton Sq North, #200, Reston, VA 22090–5012.	15	385,860
121–44803	Hillcrest Gardens, Livermore, CA.	Interfaith Housing, Inc., 550 Hillcrest Ave., Livermore, CA 94550	12	240,960
121–44804	Rotary Plaza, South San Francisco, CA.	Rotary Plaza Inc, 433 Alida Way, South S.F., CA 94080	4	96,480
121–44808	Bethlehem Towers, Santa Rosa, CA.	Bethlehem Towers Inc., 801 Tupper St., Santa Rosa, CA 95404	70	1,182,300
121–44814	Casa De Redwood, Redwood City, CA.	Casa De Redwood Foundation, 1280 Veteran's Blvd, Redwood City, CA 94603.	8	216,000
121–SH054	Westlake East, Oakland, CA	Christian Church Homes N CA, 303 Hegenberger Rd., suite 201, Oakland, CA 94621–1419.	68	1,141,020
121–SH070	Northgate Terrace, Oakland, CA	Graphic Communications URC Inc, 550 24th Street, Oakland, CA 94612.	59	1,049,400
Region 10:				
124–44028	West Alameda, Ontario, OR	WA Ltd, 8530 Wilshire Blvd, Ste 400, Beverly Hills, CA 90211 ...	19	427,080
126–44069	Lincoln Village, Lincoln City, OR	LV Ltd, 8530 Wilshire Blvd, Ste 400, Beverly Hills, CA 90211	11	260,100
171–35170	Marianna Apartments, Kenne- ... wick, WA	Marianna Enterprises, P.O. Box 5308, Everett, WA 98206	35	960,900
Totals .	.....	.....	7,210	181,493,760

[FR Doc. 94–8895 Filed 4–12–94; 8:45 am]
BILLING CODE 4210–27–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3748; FR–3685–N–01]

HOPE for Public and Indian Housing Homeownership Program (HOPE 1); Award Based on Procedural Error

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of award based on procedural error.

SUMMARY: This notice announces an award of a HOPE 1 grant of $24,882,854 to the New Community Corporation in Newark, New Jersey. This award is made after a determination by the Department that a procedural error was made in processing applications under a HOPE 1 Notice of Fund Availability (NOFA) published on October 6, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: After re-examining the procedures used to process applications submitted in response to a NOFA for the HOPE 1 program published on October 6, 1992, the Department has concluded that it made a "procedural error" with respect to one applicant. Section 415(b)(5) of the HOPE 1 Program Guidelines states: "Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or 'off the top' from amounts available for implementation grants in the next funding round." HUD has determined that it made a procedural error in reviewing the HOPE 1 implementation grant application submitted by the New Community Corporation for a portion of the Hayes Homes public housing development in Newark, New Jersey. The Department established a minimum score in that competition by using the lowest score awarded to a funded application in the previous funding round. This minimum score disqualified the New Community Corporation from being funded in the competitive round.

Upon further examination, HUD concluded that it made an error in its method of establishing the minimum score, since New Community Corporation was rated on only eight selection criteria and the minimum score used was based upon applications rated under nine criteria. (New Community Corporation was only rated under eight criteria because it was the only eligible applicant in the funding round and the ninth criterion, which was intended to compare the cost-per-unit among multiple applicants, could not be applied in the case of a sole applicant competition.) Accordingly, HUD determined that in establishing the minimum score, it should have pro-rated the score awarded to the lowest funded application from the previous competitive round. Since New Community Corporation would have been eligible for funding but for HUD's failure to pro-rate the minimum score, it

is funding New Community Corporation's application.

The Department will utilize unused amounts from appropriations for fiscal years 1992 through 1994 to fund the $24,882,854 awarded to the New Community Corporation as outlined below. The Department will allocate $9,592,854 from unused funds appropriated in fiscal years 1992–93 to fund a portion of the $24,882,854 that is being awarded to the New Community Corporation under this notice. The remaining $15,190,000 of the grant will be funded using amounts appropriated for the HOPE program in 1994.

On August 2, 1993, the Department published a NOFA announcing the availability of $182,047,160 in funding for implementation grants for the HOPE 1 program (58 FR 41126). On September 1, 1993, the Department published an amendment to the NOFA increasing the funding being made available by $24,000,000 from $182,047,160 to $206,047,160 due to the conclusion of the processing of a reprogramming request (58 FR 46209). The funds were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Acts for fiscal year 1992 (Pub. L. 102–139, approved October 28, 1991) and fiscal year 1993 (Pub. L. 102–389, approved October 6, 1992). In its fiscal year 1994 appropriations bill for HUD, Congress rescinded $45,000,000 from the amounts remaining available for the HOPE 1 program under the Department's fiscal year 1992 appropriation (Pub. L. 102–139) and $130,000,000 from the amounts remaining available under the Department's fiscal year 1993 appropriation (Pub. L. 102–389) for a total recision of $175,000,000 in the amount of funds made available under the previously published NOFA and amendment. On January 13, 1994, the Department published a second amendment to the August 2, 1993 NOFA decreasing the amount available by $175,000,000 from $206,047,160 to $31,047,160 (59 FR 1968). Of the $31,047,160 available under the NOFA, $9,692,854 will be used to fund a portion of the $24,882,854 that is being awarded to the New Community Corporation pursuant to this notice. The remainder of the grant will be funded using amounts appropriated for the HOPE program in 1994.

In the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Acts for fiscal year 1994 (Pub. L. 103–124, approved October 28, 1993), Congress appropriated a combined total of $109,190,000 for the following programs: The HOPE for Public and Indian Housing Homeownership program (HOPE 1), the HOPE for Homeownership of Multifamily Units program (HOPE 2), the HOPE for Homeownership of Single Family Homes program (HOPE 3), and the HOPE for Youthbuild Program. In the Emergency Supplemental Appropriations Act of 1994 (Pub. L. 103–211, approved February 12, 1994), $66,000,000 was rescinded from the $109,190,000 appropriated for fiscal year 1994, leaving $43,190,000. Of the $43,190,000 remaining subsequent to the rescission, the Department is allocating $15,190,000 to the HOPE 1 program. The entire HOPE 1 allocation of $15,190,000 will be utilized to fund the portion of the grant awarded to the New Community Corporation not funded using amounts available under the Fiscal Year 1992–93 appropriations.

Dated: March 29, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–8896 Filed 4–12–94; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. N–94–3444; FR–3142–N–03]

Indian Housing Development and Indian Housing Family Self-Sufficiency Program Announcement of Funding Awards for FY 1992

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Indian Housing Development and Indian Housing Family Self-Sufficiency Programs for FY 1992. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing Development Division, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0596. A telecommunication device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. [These are not toll-free telephone numbers.]

SUPPLEMENTARY INFORMATION: The Indian housing development program is authorized by Secs. 5 and 6, U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437d); U.S. Department of Housing and Urban Development and Independent Agencies' Appropriations Act for Fiscal Year 1992 (Pub. L. 102–139, 105 Stat 736, approved October 28, 1991). The Family Self-Sufficiency Program (FSS) is authorized under section 23, U.S. Housing Act of 1937, as added by section 554, of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990).

The purpose of the competition is to provide funds for the Indian housing development program to support Family Self-Sufficiency programs. The FSS program promotes the development of local strategies that coordinate the use of Indian housing with both public and private resources, to enable eligible families to achieve economic independence and self-sufficiency.

This Notice will award $241,337,549 to 64 Indian housing authorities. The 1992 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on June 15, 1992 (57 FR 26730) and a correction Notice published on July 13, 1992 (57 FR 30979). Applications were scored and selected for funding based on criteria contained in the notices.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing in the names, addresses, and the amount of funds awarded, as set out at the end of this Notice.

Dated: April 1, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Fiscal Year 1992, Public and Indian Housing Recipients of Final Funding Decisions

Program Name: Indian Housing Development.

Statute: Public Law 101–625, November 28, 1990.

Name and location	Amount
Region V, Chicago	
The location of grant files and contact person for any information regarding Region V grants is Issac Pimentel, Director, Housing and Community Development Division, Office of Indian Programs, Chicago Regional Office, 77 West Jackson Blvd., Chicago, Illinois 60604.	
Poarch Creek Indian Housing Authority, HCR 69A, Box 85B, Atmore, AL 36502	$522,500
MOWA Choctaw Housing Authority, Route 1, Box 1080–A, Mt. Vernon, AL 36560	2,496,960
Seminole Tribal Housing Authority, 3101 Northwest 63rd Avenue, Hollywood, FL 33024	4,890,000
Penobscot Tribal Reservation Housing Authority, Indian Island P.O. Box 498, Old Town, ME 04468	709,000
Indian Township Passamaquoddy Reserv. Hsg. Authy., P.O. Box 127, Princeton, ME 04668	1,339,880
Saginaw Chippewa Housing Authority, 2451 Nish-Na-Be-Anong Road, Mt. Pleasant, MI 48858	1,520,000
Bay Mills Housing Authority, Route 1, Box 3345, Brimley, MI 49715	2,244,710
Leech Lake Reservation Housing Authority, Route 3, Box 100, Cass Lake, MN 56633	2,990,155
White Earth Reservation Housing Authority, P.O. Box 436, White Earth, MN 56591	1,470,400
Fond du Lac Reservation Housing Authority, 932 Trettel Lane, Cloquet, MN 55720	1,428,000
Red Lake Reservation Housing Authority, P.O. Box 219 Highway 1 East, Red Lake, MN 56671	657,600
Mille Lacs Reservation Housing Authority, HCR 67, Box 194, Onamia, MN 56359	1,636,998
Choctaw Housing Authority, P.O. Box 6088, Choctaw Branch, Philadelphia, MS 39350	1,066,014
North Carolina State Indian Housing Authority, P.O. Box 2343, Fayetteville, NC 28302	1,980,258
Seneca Nation Housing Authority, 50 Iroquois Drive, Irving, NY 14081	741,663
Saint Regis (Akwesasne) Indian Housing Authority, Route 37 P.O. Box 540, Hogansburg, NY 13655	1,540,390
Oneida Indian Nation of New York Housing Authority, 101 Canal Street, Canastota, NY 13032	1,175,000
Mohican Housing Authority, Route 1, Bowler, WI 54416	70,000
Sokaogon Chippewa Housing Authority, P.O. Box 186, Crandon, WI 54520	620,000
Lac Courte Oreilles Housing Authority, Route 2, Hayward, WI 54843	1,961,716
St. Croix Chippewa Housing Authority, P.O. Box 347, Hertel, WI 54845	791,616
Subtotal	31,852,860
Region VI, Oklahoma City	
The location of grant files and contact person for any information regarding Region V grants is Hugh Johnson, Director, Indian Programs Division, Oklahoma City Office, 200 N.W. 5th Street, Oklahoma City, OK 73102–3202.	
Chitimacha Tribe, P.O. Box 661, Charenton, LA 70523–6691	1,163,986
Cherokee Nation, P.O. Box 1007, Tahlequah, OK 74464	15,184,082
Chickasaw Nation, P.O. Box 668, Ada, OK 74820	8,699,649
Absentee Shawnee Tribe, P.O. Box 425, Shawnee, OK 74801	3,509,809
Seminole Nation, P.O. Box 1493, Wewoka, OK	1,468,703
Kiowa IHA, P.O. Box 847, Anadarko, OK 73005	1,174,460
Apache Tribe HA, P.O. Box 1172, Anadarko, OK 73005	3,513,554
Delaware Tribe IHA, P.O. Box 334, Chelsea, OK 74016	1,151,898
Subtotal	35,866,141
Region VIII, Denver	
The location of grant files and contact person for any information regarding Region VIII grants is Frank Padilla, Director, Community Planning and Development Staff, Office of Indian Programs, Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349.	
Southern Ute, P.O. Box 447, Ignacio, CO 81137	1,279,660
Ute Moutain Ute, P.O. Box EE, Towaoc, CO 81334	1,167,960
Blackfeet, P.O. Box 790, Browning, MT 59417	10,552,853
Fort Peck, P.O. Box 667, Poplar, MT 59255	3,120,999
Fort Belknap, Route 1, P.O. Box 61, Harlem, MT 59526	4,526,447
Chippewa Cree, P.O. Box 615, Box Elder, MT 59521	6,662,994
Salish-Kootenai, P.O. Box 38, Pablo, MT 59855	2,142,600
Turtle Mountain, P.O. Box 620, Belcourt, ND 58316	4,532,400
Santee Sioux, Route 2, Box 164, Niobrara, NE 68760	1,362,113
Oglala Sioux, P.O. Box C, Pine Ridge, SD 57770	8,719,005
Crow Creek, P.O. Box 19, Fort Thompson, SD 57339	2,837,502
Cheynne River, P.O. Box 480, Eagle Butte, SD 57625	2,789,740
Yankton Sioux, P.O. Box 426, Wagner, SD 57380	6,638,955
Ute Indian, P.O. Box 250, Fort Duchesne, UT 84026	3,857,583
Utah Paiute, 665 North, 100 East, Cedar City, UT 84720	1,296,105
Subtotal	61,486,916
Region IX, Phoenix	
The location of grant files and contact person for any information regarding Region IX is Ken Bowring, Acting Director, Housing Development Division, Office of Indian Programs, Two Arizona Center, 400 N. 5th Street, Suite 1650, Phoenix, AZ 85004–2361.	
Navajo Housing Authority, P.O. Box 387, Window Rock AZ 86515	35,655,201
Salt River Pima-Maricopa, Rt. 1, Box 215, Scottsdale, AZ 85256	3,568,373
All Mission Indian Housing Authority, 1523 E. Valley Pkwy., Suite 231, Escondido, CA 92027	1,061,480
Modoc-Lassen Indian Housing Authority, P.O. Drawer 2028, Susanville, CA 96130	560,390
Northern Circle Indian Housing Authority, 694 Pinoleville Drive, Ukiah, CA 95482	3,864,403
Karuk Tribe Housing Authority, 1320 Yellowhammer, Yreka, CA 96097	3,130,767

Name and location	Amount
Zuni Housing Authority, P.O. Box 710, Zuni, NM 87327	3,124,502
All Indian Pueblo Housing Authority, P.O. Box 35040, Station D, Albuquerque, NM 87176	3,363,961
Duck Valley Housing Authority, P.O. Box 129, Owyhee, NV 89832	2,426,912
Subtotal**	58,367,651
Region X, Anchorage	
The location of grant files and contact person for any information regarding Region X, Anchorage grants is Marlin Knight, Director, Public and Indian Housing Division, Anchorage Office, 949 E. 36th Ave., suite 401, Anchorage, Alaska 99508–4135.	
Northwest Inupiat HA, P.O. Box 331, Kotzebue, AK 99752	4,035,736
Interior Reg HA, 828 27th Avenue, Fairbanks, AK 99701	7,214,208
AVCP HA, Post Office Box 767, Bethel, AK 99559	11,707,157
Bristol Bay HA, Post Office Box 50, Dillingham, AK 99576	2,119,822
Cook Inlet HA, 670 West Fireweed, Lane, Anchorage, AK 99503	7,749,250
Kodiak Island HA, 2815 Woody Way, Kodiak, AK 99615	1,258,186
Aleutian HA, 401 East Fireweed Lane, #101, Anchorage, AK 99501	2,605,095
Subtotal**	36,689,454
Region X, Seattle	
The location of grant files and contact person for any information regarding Region X, Seattle grants is John Barber, Director, Housing Development Division, Office of Indian Programs, 909 First Ave., suite 200, Seattle, WA 98104–1000.	
Siletz Indian, P.O. Box 549, Siletz, OR 97380	2,120,450
Quinault, P.O. Box 160, Taholah, WA 98587	2,312,129
Lummi, 3220 Balch Road, Bellingham, WA 98226–8698	6,815,781
Tulalip, 3107 Reuben Shelton Dr., Marysville, WA 98271	5,826,167
Subtotal	17,074,527
Total***	241,337,549

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–94–3617; FR–3444–N–05]

NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants: Amendment

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of amendment of NOFA and application submission deadline.

SUMMARY: This notice announces a deadline of June 30, 1994, for applications for Category II, Stage One Lead-Based Paint Hazard Reduction grants in the NOFA document that was published in the **Federal Register** on June 4, 1993 (58 FR 31848).

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Director, Program Management Division, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street SW., Washington, DC 20410, telephone 1–800–RID–LEAD (1–800–743–5323). TDD numbers for the hearing-impaired are: (202) 708–9300 (not a toll-free number) or 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 4, 1993, the Department published a Notice of Funding Availability for this program (58 FR 31848). A notice correcting a date applicable to Category II grants was published on June 14, 1993 (58 FR 32958). This notice is for the purpose of establishing a deadline of June 30, 1994, for the receipt of applications for Category II, Stage One, Lead-Based Paint Hazard Reduction grants.

The Department has established this deadline for all Category II applicants because it has determined that the Category II Lead-Based Paint Hazard Reduction Grant Program is superseded by the Environmental Protection Agency Grant Program authorized by the Residential Lead-Based Hazard Reduction Act of 1992 (title X, Pub. L. 102–550; approved October 28, 1992) (title X). Section 1021 of title X amends the Toxic Substances Control Act, 15 U.S.C. 2601 et seq. (TSCA), by adding a new title IV, Lead Exposure Reduction. Title X gives the Environmental Protection Agency (EPA) the primary responsibility for establishing State training, certification or accreditation programs.

Section 1011(g) of title X authorizes the Secretary to make grants of up to $200,000 to establish State training, certification, or accreditation programs that meet the requirements of section 402 of the TSCA. Under section 402, the EPA is to promulgate final regulations by April 28, 1994, governing lead-based paint activities, "to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified." Section 402 also supersedes the provisions set forth under the headings "Lead Abatement Training and Certification" and "Training Grants" in title III of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139). Under section 404(g) of the TSCA, the Administrator of the EPA is authorized to make grants to States to develop and carry out authorized State programs.

The new deadline will apply to all potential applicants. In addition to this notice in the **Federal Register**, the Department is sending direct notification of the deadline change to all parties that have requested an application.

Correction of Publication

Accordingly, FR Doc 93–13101, NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants, published in the **Federal Register** on June 4, 1993 (58 FR 31848), is amended by revising the Category II, State One deadline dates, as follows:

1. On page 31848, in column 1 and continuing in column 2, under the section headed "**DATES**", the first paragraph under the heading "Category II" is revised to read as follows:

Category II: Applicants may file a Stage One grant application at any time after 9 a.m. (Eastern time) Tuesday, September 21, 1993, but the application must be received by HUD no later than 3 p.m. (Eastern time) Thursday June 30, 1994. The final half of the grant sum (Stage Two) may be requested at any time after April 28, 1994. Category II funds will be awarded on a first-come, first-served basis (see § 8.5 of this NOFA for further application information). HUD advises States that the Environmental Protection Agency has announced the availability of: Grants to Develop and Carry Out Authorized State Accreditation and Certification Programs for Lead-Based Paint Professionals (59 FR 10131, March 3, 1994).

* * * * *

2. On page 31859, in column 3, in section 8.5, "Selection Criteria and Process", the introductory text of paragraph (b) is revised to read as follows:

(b) *Stage One.* A State that does not have a statute or that has existing legislation that is not consistent with the currently identified elements of a State certification program may file a formal grant application at any time after an enabling statute, or amendment to existing legislation, is signed into law, but not sooner than 9 a.m. (Eastern time), Tuesday, September 21, 1993. States that have existing enabling legislation that is considered consistent with the currently identified elements of a satisfactory State program may file a formal Stage I grant application at any time after 9 a.m. (Eastern time), Tuesday, September 21, 1993, but no later than 3 p.m. (Eastern time), Thursday, June 30, 1994. Upon acceptance by HUD and EPA of the statute, the implementation plan, and the budget, the State may apply for one-half of its total grant sum.

The application shall include:

* * * * *

Authority: 42 U.S.C. 4821–4846; 42 U.S.C. 3535(d).

Dated: April 7, 1994.

Arthur S. Newburg,

Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 94–8894 Filed 4–12–94; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–962–9800–02; ES–046841, Group 86, Arkansas]

Notice of Filing of Plat of the Dependent Resurvey

The plat of the dependent resurvey of the north, east, and a portion of the south and west boundaries and a portion of the subdivisional lines of Township 2 South, Range 27 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 31, 1994.

The survey was made upon request submitted by the United States Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., May 31, 1994.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: April 5, 1994.

Michael D. Nedd,

Acting State Director.

[FR Doc. 94–8832 Filed 4–12–94; 8:45 am]

BILLING CODE 4310–GJ–M

[NM017–4210–05; NM 90010]

Notice of Realty Action—Recreation and Public Purpose (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise that the following public lands in Rio Arriba County, New Mexico, have been examined and found suitable for classification for conveyance to the Lindrith Baptist Church under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 *et seq.*). The Lindrith Baptist Church proposes to use the lands for cemetery sites.

New Mexico Principal Meridian

T. 24 N., R. 2 W.,
Sec. 20, W½NE¼SW¼SE¼,
E½NW¼SW¼SE¼.
T. 25 N., R. 3 W.,
Sec. 22, NE¼NW¼NW¼.
The area described contains 20 acres.

The lands would not be leased prior to being patented to the Lindrith Baptist Church. A patent under the Recreation and Public Purpose Act is consistent with current BLM land use planning and would be in the public interest. The lands are not needed for Federal purposes.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for a pipeline granted to El Paso Natural Gas Company by right-of-way NMNM 021486.

5. Any other reservation that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interest therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Rio Puerco Resource Area, 435 Montano NE., Albuquerque, New Mexico.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of lands to the District Manager, Bureau of Land Management, 435 Montano NE, Albuquerque, New Mexico 87107.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a cemetery. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether

the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for cemetaries.

Any adverse comments will be revised by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: April 4, 1994.

Michael R. Ford,

District Manager.

[FR Doc. 94–8831 Filed 4–12–94; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–786728

Applicant: Avocet Research Associates, Pt. Reyes Station, CA

The applicant requests a permit to conduct population surveys and nest searches for the California clapper rail (*Rallus longirostris obsoletus*) to determine their distribution, abundance and habitat affinities for the purpose of enhancement of the survival of the species.

PRT–787371

Applicant: Coastal Resources Institute, California Polytechnic State University, San Luis Obispo, CA

The applicant requests a permit to capture and release Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in Santa Cruz County, California, to determine their distribution and abundance for the development of a Habitat Conservation Plan.

PRT–766567

Applicant: Daniel Anderson, Davis, CA

The applicant requests a permit to capture, band, color-mark and release and import up to 25 eggs, 300 feathers and blood samples and 100 salvaged bones of the California brown pelican (*Pelecanus occidentalis*) for contaminant analysis in the Gulf of California for the purpose of enhancement of the survival of the species.

PRT–676379, PRT–675990

Applicant: National Marine Fisheries Service, Southeast Region, St. Petersburg, FL

The applicant requests a permit to import 180 live Kemp's ridley sea turtle hatchlings (*Lepidochelys kempii*) for the purpose of enhancement of the survival of the species through internal wire-tagging and turtle excluder device development studies. These turtles will be held for up to 2 years then released in the Gulf of Mexico.

PRT–788471

Applicant: Richard Cabela, Sidney, NE

The applicant requests a permit to import the sport-hunted trophy of one bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. E.L. Pringle, "Huntly Glen", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–787484

Applicant: Keane Biological Consulting, Long Beach, CA

The applicant requests a permit to monitor nesting sites and band California least terns (*Sterna antillarum browni*) at Los Angeles Harbor, Terminal Island and Batiquitos Lagoon for the purpose of enhancement of the survival of the species.

PRT–788470

Applicant: Mary Cabela, Sidney, NE

The applicant requests a permit to import the sport-hunted trophy of one bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. E.L. Pringle, "Huntly Glen", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–769851

Applicant: Bruce J. Turner, Johnson City, TN 37601

The applicant requests an amendment to their current permit to include take of up to 20 specimens of desert pupfish (*Cyprinodon macularius*) from each separate population throughout the range of the species for DNA research for the purpose of enhancement of the survival of the species.

PRT–788912

Applicant: Exotic Animals, Tarzana, CA 91356

The applicant requests a permit to import a female captive-bred tiger (*Panthera tigris*) from the Bahamas for the purpose of enhancement of survival through conservation education.

PRT–704301

Applicant: Jan Giacinto & Dick Arthur, Exotic Animals, Tarzana, CA 91356

The applicant requests an amendment to their current permit for multiple exports and reimports of a pair of captive-bred tigers (*Panthera tigris*) and a female captive-bred leopard (*Panthera pardus*) to and from the Bahamas for the purpose of enhancement of survival through conservation education.

PRT–786040

Applicant: Alfred Cuming, Watkinsville, GA 30677

The applicant requests a permit to import 18 captive-laid eggs of white-eared pheasant (*Crossoptilon crossoptilon*) from Mr. Ian Henderson, Stocksfield on the Tyne, Northumberland, United Kingdom, for the purpose of enhancement through captive breeding.

PRT–744554

Applicant: Colorado State University—LCTA Lab., Fort Collins, CO 80523

The applicant requests an amendment to their current permit to collect plant material of *Silene lanceolata* in Pohakuloa Training Area, Endangered Plant Habitat, Hawaii, for the purpose of enhancement of the survival of the species through scientific research on reproductive biology, genetics, and propagation.

PRT–744707

Applicant: O'Farrell Biological Consulting, Las Vegas, NV 89108

The applicant requests an amendment to their permit to live-capture, mark, measure, and release Pacific little pocket mouse (*Perognathus longimembris pacificus*) throughout the species' range for the purpose of enhancement of the survival of the species through scientific research and population surveys.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S.

Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 8, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–8859 Filed 4–12–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (U.S.A.I.D) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Reneé Poehls, (202) 736–4743, M/FA/AS/ISS/RM, room B930 NS, Washington, D.C. 20523–0097.

Date Submitted: March 25, 1994.

Submitting Agency: U.S. Agency for International Development.

OMB Number: 0412–0532.

Type of Submission: Renewal.

Title: Training Cost Analysis (TCA) System.

Purpose: The U.S. Agency for International Development (A.I.D.) provides training in the U.S. for over 19,000 students each year from Third World countries. These "A.I.D. Participants" and their training programs are managed by 303 contractors. Contracts are let by A.I.D. Missions overseas, Central and Regional Bureaus in Washington, D.C., and the Office of International Training. The Agency has now developed a project management system which will standardize most aspects of the participant training process, including the definition of training activities provided by contractors for A.I.D. Participants; the submission of cost proposals in response to an RFP which identifies the costs of those services; and a cost reporting system which enables project managers to assure that contractors are keeping within their proposed budgets. Respondents to an RFP will have a submission burden of one and a contractor will have a submission burden of four.

Annual Reporting Burden:

*Respondents: 375 (a) & 200 (b); annual responses: 375 (a) & 800 (b); average hours per response: 16 (a) & 8 (b); annual burden hours: 6000 (a) & 6400 (b).

*(a) RTP and (b) contractors

Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: March 29, 1994.

Elizabeth Baltimore,

Bureau for Management, Administrative Service, Chief, Information Support Services Division.

[FR Doc. 94–8781 Filed 4–12–94; 8:45 am]

BILLING CODE 6116 01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–355 (Final), and 731–TA–659 and 660 (Final)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan; Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon the request of two respondents and petitioners in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for April 12, 1994, *in camera. See* Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: James Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that unusual circumstances are present in these investigations so as to make it appropriate to hold a portion of the hearing *in camera.* This decision is made in light of the desirability of affording a full discussion at the hearing of business proprietary information (BPI) concerning (1) the condition of the domestic industry or industries; (2) confidential pricing, capacity, and capacity utilization data; and (3) confidential data regarding profitability, cost of goods sold, and sales, general and administrative expenses relating to a small number of domestic producers. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible, its business should be conducted in public.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in the above-captioned investigation be closed to the public to prevent the disclosure of business proprietary information.

By order of the Commission.

Issued: April 7, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8812 Filed 4–12–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–362]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

In the Matter of Certain Methods of Assembling Plastic Ball Valves and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Natural Gas Products Co. ("NGPC") and Friatec AG Keramik-und Kunststoffwerke ("Friatec").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on April 5, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: April 5, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8851 Filed 4–12–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–351]

Commission Determination Not To Review an Initial Determination Terminating the Investigation as to Respondent Kevin Scheier on the Basis of a Consent Order Agreement and Issuance of Consent Order

In the Matter of Certain Removable Hard Disk Cartridges and Products Containing Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) terminating the above-captioned investigation as to one respondent on the basis of a consent order agreement and consent order. The deadline for completion of this investigation is November 28, 1994.

FOR FURTHER INFORMATION CONTACT: Rachele R. Valente, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3089.

SUPPLEMENTARY INFORMATION: On May 20, 1993, the Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930, as amended, in the misappropriation of trade secrets and trade dress, infringement of federally-registered trademarks, false designation of origin and passing off in the importation, the sale for importation, and the sale within the United States after importation, of certain removable hard disk cartridges.

On December 28, 1993, complainant Syquest Technology, Inc. ("Syquest") and respondent Kevin Scheier ("Scheier") filed a joint motion to terminate the investigation as to Scheier on the basis of a consent order agreement and a proposed consent order. On February 4, 1994, Syquest and Scheier withdrew the joint submission dated December 28, 1993, and filed a second joint motion for termination including modified versions of the consent order agreement and proposed consent order. On February 14, 1994, the Commission investigative attorney filed a response in support of the joint motion. On March 7, 1994, the presiding ALJ issued an ID (Order No. 20), granting the joint motion. No petitions for review of the ID, or agency or public comments, were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on (202) 205–2648.

Issued: April 6, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8852 Filed 4–12–94; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–351]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

In the Matter of Certain Removable Hard Disk Cartridges and Products Containing Same

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Srinivasan V. Chari.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on April 6, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be

granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: April 6, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8853 Filed 4–12–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–167 (SUB-NO.1138X), Consolidated Rail Corp.— Abandonment Exemption—In Lake County, Indiana. EA available 4/8/94.

Comments on the following assessment are due 30 days after the date of availability: None.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–8868 Filed 4–12–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32474]

Chicago and North Western Transportation Company—Trackage Rights Exemption—Peoria and Pekin Union Railway Co.

Peoria and Pekin Union Railway Company (PPU) has agreed to grant trackage rights to Chicago and North Western Transportation Company (C&NW) over those portions of PPU trackage located between the point of connection between C&NW and PPU trackage, at Darst Street, and a point which is the clearance point of the switch of the PPU tracks and tracks owned by Archer Daniels Midland Company, in Peoria, IL. The trackage rights were to become effective on April 1, 1994.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Thomas F. Flanagan, 165 North Canal Street, Chicago, IL 60606–1551.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: April 6, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–8854 Filed 4–12–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–6 (Sub-No. 359X)]

Burlington Northern Railroad Co.—Abandonment Exemption—In Mobile County, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts Burlington Northern Railroad Company (BN) from the prior approval requirements of 49 U.S.C. 10903–10904 to permit BN to abandon its car barge service between Mobile and Blakely Island, AL, and the Blakely Island track between engineering station (ES) 0.00N to ES 58 + 98N and ES 0 + 00S to ES 103 + 53S, a total of 3.08 miles. The exemption will be subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 13, 1994. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 25, 1994. Petitions to stay must be filed by April 28, 1994. Requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by May 3, 1994. Petitions to reopen must be filed by May 9, 1994

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 359X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) BN's representative, Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102–5384.

FOR FURTHER INFORMATION CONTACT: Deputy Director Beryl Gordon (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: April 1, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–8855 Filed 4–12–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Notice of Proposed 1994 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed revised aggregate production quotas for 1994.

SUMMARY: This notice proposes revised 1994 aggregate production quotas for controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

DATES: Comments or objections should be received on or before (30 days after date of publication).

[1] Under 49 CFR 1150.32(b), a notice of exemption does not become effective until 7 days after filing. According to the verified notice of exemption, applicant proposed to consummate the transaction on March 25, 1994. Applicant's verified notice of exemption was originally filed on March 15, 1994. Because applicant had to submit an additional filing fee, the filed date of the verified notice of exemption became March 25, 1994. Therefore, consummation should not have taken place prior to April 1, 1994. Applicant's representative has confirmed that the correct consummation date is on or after April 1, 1994.

[1] See Exempt. of Rail Line Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC, 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations.

On October 8, 1993, a notice of the 1994 established aggregate production quotas was published in the **Federal Register** (58 FR 52508). The notice stipulated that the Administrator of the DEA would adjust the quotas in early 1994 as provided for in title 21, Code of Federal Regulations, § 1303.23(c). These aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1994 and do not include amounts which may be imported for use in industrial processes.

The proposed revisions are based on a review of 1993 year-end inventories, 1993 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the DEA by the Food and Drug Administration and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator by section 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the DEA hereby proposes the following changes in the 1994 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base.

Basic class	Previously established 1994 aggregate production quotas	Proposed revised 1994 aggregate production quotas
Schedule I:		
2,5-Dimethoxyamphetamine	15,400,000	15,510,000
Schedule II:		
Alfentanil	7,110	8,000
Amphetamine	359,000	469,000
Codeine (for sale)	64,235,000	58,127,000
Desoxyephedrine	22,100	11,000
Diphenoxylate	1,023,000	638,000
Levorphanol	6,400	7,400
Methylphenidate	5,300,000	6,924,000
Opium	1,242,000	688,000
Oxycodone (for sale)	4,312,000	2,995,000
Oxycodone (for conversion)	3,400	5,400
Oxymorphone	1,400	2,420
Pentobarbital	14,430,000	15,000,000
Phencyclidine	32	52
Secobarbital	550,000	338,000
Sufentanil	620	870

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notice of aggregate production quotas are not subject to centralized review under Executive Order 12866.

Rules establishing aggregate production quotas for controlled substances in Schedules I and II are required by statute, fulfill United States obligations under the Single Convention on Narcotic Drugs, 1961, and other international treaties, and are essential to a criminal law enforcement function of the United States. Without the periodic establishment and adjustment of aggregate production quotas, pharmaceutical manufacturers in the United States could not lawfully produce a wide variety of medically necessary pharmaceutical drugs.

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter raises no Federalism implications which would warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment and revision of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international obligations of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: April 5, 1994.

Thomas A. Constantine,

Administrator.

[FR Doc. 94–8784 Filed 4–12–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,467; Pacific Western Forest Industries, St. Helens, OR

TA–W–29,417; R.P. Nixon Operations, Inc., Hays, KS

TA–W–29,416; Sonoco Fibre Drum, Saraland, AL

TA–W–29,389; Aeroscientific Corp., Beaverton, OR

TA–W–29,390; A.J. Electronics, Inc., Chatsworth, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,328; Tetra-Pak, Inc., Minneapolis, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,345; Camco Products & Services, Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,492; Banister Shoe Co., U.S. Shoe Corp., Beloit, WI

The importation of footwear did not negatively impact employment at the retail level. The corporation experienced increasing footwear sales during the relevant period.

TA–W–29,505; Apertus Technology, Eden Prairie, MN

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,530; Northwest Alloys, Inc., Addy, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,394; Martin Marietta, Projection Display Products, Syracuse, NY

Bids awarded to foreign manufacturers represented an insignificant part of the subject firm's sales decline during the relevant period.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29,539; Moog Automotive, St. Louis, MO

A certification was issued covering all workers separated on or after February 4, 1993.

TA–W–29,422; KSG-Bohn, South Haven, MI

A certification was issued covering all workers separated on or after January 6, 1993.

TA–W–29,474; Leslie Fay Co., Sportswear Div., Morrow, GA

A certification was issued covering all workers separated on or after January 19, 1993.

TA–W–29,425; Great Southern Oil and Gas Co., Inc., Lafayette, LA

A certification was issued covering all workers separated on or after January 5, 1993.

TA–W–29,544; Oshkosh B'Gosh, Oshkosh, WI (2660 Oregon Street)

TA–W–29,544A; Oshkosh B'Gosh, Oshkosh, WI (2748 Oregon Street)

A certification was issued covering all workers separated on or after February 15, 1993.

TA–W–29,543; Oshkosh B'Gosh, McKenzie, WI

A certification was issued covering all workers separated on or after January 31, 1993.

TA–W–29,513; Rosaria Sportswear, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after January 25, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00008; Allied Signal Aerospace, Eatontown, NJ

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from subject firm to Canada or Mexico during the relevant period.

A survey was conducted with firms to whom Allied Signal Aerospace submitted bids for large contracts and was not awarded the project. Results revealed that respondents did not utilize Mexican or Canadian production sources for the subject contracts. An investigation is currently in process for trade adjustment assistance under Section 223 of the Trade Act. The

number assigned for this TAA investigation is TA–W–29,457.

NAFTA–TAA–00054; National Steel Pellet Co., Keewatin, MN

The investigation revealed that criterion (1) has not been met in conjunction with the requirements of Section 506(b)(2) of the Act. Workers at the subject firm were not separated from employment on or after December 8, 1993, the earliest date for which certification under NAFTA–TAA applies.

NAFTA–TAA–00039; J.C. Penney Co., Inc., Drapery Fabrication, Center, Custom Decorating Sales Center, Newark, DE

The investigation revealed that criterion (1) has not been met in conjunction with the requirements of Section 506(b)(2) of the Act. Workers at the subject firm were not separated from employment on or after December 8, 1993, the earliest date for which certification under NAFTA–TAA applies.

NAFTA–TAA–00035; Armco Stainless & Alloy Products, Bridgeville, PA

The investigation revealed that criterion (3) and criterion (4) have not been met. There was no shift of production operations performed by the workers to Mexico or Canada during the relevant period. The investigation revealed that the plant ceased production in late 1993 and that customers did not utilize firms in Mexico or Canada for the finishing of the types of stainless and alloy steel production previously done by the Bridgeville, PA plant. An investigation is being immediately instituted for trade adjustment assistance under Section 223 of the Trade Act. The number assigned for this trade adjustment assistance investigation is TA–W–29,716.

NAFTA–TAA–00056; Bristol Consolidators, Inc. Indianola, PA

The investigation revealed that workers of the subject firm do not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00036; Key Tronic Corp., Cheney, WA and Humanix Temporary Services, Spokane, WA

A certification was issued covering all workers of Key Tronic Corp., Cheney, WA engaged in employment related to electrical and final assembly of keyboards separated on or after December 8, 1993.

A certification was issued covering all workers of Humanix Temporary Services, Spokane, WA engaged in employment related to electrical and final assembly of keyboards at Key Tronic Corp., Cheney, WA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of March, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: April 5, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–8864 Filed 4–12–94; 8:45 am]

BILLING CODE 4510–30–M

[SGA No. DAA 94–004]

Employment and Training Administration

Job Training Partnership Act: Youth Pilot Projects

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: The U.S. Department of Labor, Employment and Training Administration, under Title IV of the Job Training Partnership Act, is seeking grant applications to test better ways of providing effective employment and training services to out-of-school youth who are economically disadvantaged. This grant solicitation consists of two separate competitions—(1) single site grants in which new untested ideas for a youth program will be implemented at one site, or an existing youth program will be pilot-tested in a different site; and (2) multi-site grants in which an existing small-scale youth program will be pilot-tested in five or more additional sites. The Department may award an evaluation contract to an outside contractor to evaluate grantees' performance which will require grantees' cooperation.

Applications may be submitted for both the single site and multi-site grants. All information required to *submit* a proposal is contained in this announcement.

DATES: Applications for grant awards will be accepted commencing April 13, 1994. The closing date for receipt of applications shall be May 16, 1994, at 2 p.m. (Eastern Time).

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Charlotte A. Adams, Reference: SGA/DAA 94–004, 200 Constitution Avenue, NW., room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Charlotte A. Adams, Division of Acquisition and Assistance, telephone (202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) of the Department of Labor (DOL) announces the availability of funds to conduct innovative pilot projects aimed at out-of-school youth.

This announcement consists of three parts: Part I—Background, Part II—Application Process and Part III—Reporting Requirements.

Part I—Background

It is the Department of Labor's experience that few out-of-school youth programs supported by the Job Training Partnership Act (JTPA) have been effective. JTPA programs in general appear to have no positive impact on the earnings, employment, criminal involvement, or welfare dependency of male and female out-of-school youth.

Current JTPA Title II–C programs spend an average of $2,800 per youth and last perhaps four or five months. It may well be that this is too small and too short term of an investment to expect to turn around the lives of economically and educationally disadvantaged youth. We also believe that new and different approaches to serving the needs of youth should be tested.

The Employment and Training Administration (ETA) believes that more comprehensive and innovative second-change approaches need to be designed and tested that focus on the needs of youth, particularly, out-of-school youth, on a variety of fronts. This solicitation is a pilot effort by the Department and ETA to move in that direction. In both the single site and multi-site grants, the Department is particularly looking for models that are more comprehensive and intensive than are typically now provided by JTPA Title II–C.

Ideally, the development of new approaches to serving youth occurs in several stages—

(1) An idea or model is developed;

(2) The idea is put into practice at one site, and then perhaps at a second site with some modifications;

(3) The model program is then pilot-tested a several sites;

(4) The model program then enters a demonstration stage in which it is formally evaluated using random assignment of program applicants to treatment and non-treatment group at several sites; and

(5) If the random-assignment evaluation results come out positive, the model program is replicated widely across the country. This grant announcement covers stages (2) and (3) of this process—the pilot-testing of a new approach at a first or second site or at multiple sites.

Part II—Application Process

A. Eligible Applicants

All private for-profit, non-profit organizations, educational institutions, and state and local governments can apply for both the single site and multi-site grants. However, any award made as a result of this solicitation will be non-fee bearing.

B. Funding

Funding for this solicitation is authorized under the Job Training Partnership Act (JTPA) title IV–D pilot and demonstration funds. The Department has set aside $1 million for a number of single site pilot project grants, and $1 million for one multi-site pilot project grant.

C. Application Procedures

All Information Required To Submit A Proposal is Contained in This Announcement.

1. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. Applicants should clearly label their proposals to indicate whether they are applying for a single site or multi-site grant. The proposal shall consist of a of two (2) separate and distinct parts: Part I shall contain the cost proposal which includes the following items: Standard Form (SF) 424, "Application for Federal Assistance:" (See Appendix A) and SF 424A, "Budget" (See Appendix B). Also, the budget shall include on a separate page(s) a detailed cost analysis of each line item in the budget.

Part II shall contain a technical proposal that demonstrates the offeror's capabilities in accordance with the Statement of Work of this solicitation. No cost data or reference to price shall be included in the technical proposal. In order to assist offerors in the preparation of their proposals and to facilitate the expeditious evaluation by the panel, proposals should be organized and presented in the same sequential order as the Evaluation Criteria in part II(F) of this solicitation.

2. Hand Delivered Proposals

Proposals must be mailed at least five days prior to the closing date. However, if proposals are hand delivered, they must be received at the designated place by 2 p.m., Eastern time by May 16, 1994. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be accepted. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness.

3. Late Proposals

Any proposals received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of application (e.g. an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed by the 15th);

(2) Was sent by U. S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U. S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelop or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal, shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation bull's eye postmark on both receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative. If the representative's identity is made known and the representative signs a receipt for the proposal before award.

4. Period of Performance

The period of performance under this grant will be 12 months from the date of grant execution.

5. Option To Extend

Based on the availability of funds, effective program operation and the needs of the Department, the grants may be funded for up to two additional years.

D. Matching Requirements

The Department of Labor funding under these awards shall equal 80 percent of the total grant cost. The awardee shall provide not more than 10 percent from other federal sources and the remainder from non-federal sources. The matching funds can be in cash or in-kind.

E. Statement of Work

Proposed projects for single site pilot projects can be either an existing project or a new innovative idea for serving out-of school youth. Projects proposed for a multisite pilot should already exist. Grants funded under this competition must include an evaluation component that tracks the implementation and operation of the pilot sites and the outcomes of participants. If the pilot sites appear to be successful, the Department at some later point may wish to formally evaluate these models through the random assignment of program applicants to treatment and non-treatment groups.

1. Single Site Grant Competition

Under this part, the Department will provide a number of small grants to pilot-test new approaches to serving out-of-school youth in an initial site or a second site. These models will not be formally evaluated at this stage. This generally should be seen as an initial pilot project stage, which may eventually lead to pilot-testing in multiple sites and later to formal

demonstration and evaluation. Applicants for these grants should explain in their proposals why the idea they plan to implement has the potential for serving out-of-school youth effectively.

If it is a new idea to be tried for the first time, justification as to why the model should be successful in meeting the needs of youth should be provided in the proposal. If it is an existing program to be pilot-tested in a second site, documentation should be provided regarding the characteristics of enrollees in the existing program, services provided, and outcomes. The proposal should also demonstrate an understanding of what else has been tried in serving out-of-school youth, and how the suggested model differs from other approaches.

The application should include an evaluation component to document the implementation and operation of the pilot project. The evaluation should not include random assignment of program applicants, but should document the characteristics of youth served, services provided, how the services were provided and outcomes of participants.

2. Multi-Site Grant Competition

Under this part, the Department wants to pilot test a structured model that holds promise for serving out-of-school youth. Applicants under this part should make a strong case that the model they are proposing holds promise for serving out-of-school youth effectively. The model being proposed should already be in operation in at least one site.

Evidence should be provided in the proposal that the model is being successfully implemented at the existing site. The proposal should also demonstrate an understanding of what else has been tried in serving out-of-school youth, and how the suggested model differs from other approaches. Documentation should be provided as to number of youth served, types of services provided, and outcomes.

The multi-site pilot project that will be funded here should be seen as a preliminary stage to formal demonstration and evaluation. The model can be implemented in approximately five pilot sites across the country, within a State or local districts within a large metropolitan area. The sites do not need to be identified at the time the application is made.

Applications under this part should include an evaluation component that tracks the implementation and operation of the program model in the pilot sites. The evaluation should not include random assignment of program applicants, but should document the characteristics of youth served, services provided, and outcomes of participants.

3. Program Model for Both Single and Multi-Site Grants

If the applicant proposes to pilot-test a new idea that has never been tried before, the proposal should discuss why the proposed model holds promise for serving out-of-school youth effectively. The proposal should delineate the key elements of the model to be implemented, and provide detailed plans as to the site in which it will be operated, the organization that will run the program, the population of youth who will be the focus of the program, what services will be provided, and what other agencies will coordinate with the project.

If the applicant is proposing to pilot-test an existing program in an additional site or in multiple sites, the proposal should discuss what the program does, who it serves, how it provides the service, what and who are involved, and the outcomes. It should discuss the dynamics of replicating the program in another community and the projected differences between the initial and new communities.

It should also discuss the flexibility of the program and how it will be adapted to address the needs in the community where replication will occur. The proposal should discuss the planning, staff development, and implementation. The applicant should discuss preliminary communication with sites in which the pilot testing may occur, but no formal selection needs to be made by the time of application.

The proposal should demonstrate an understanding of the needs of youth. If a national organization is applying for a multi-site pilot project, the applicant should demonstrate intimate understanding of how the proposed model operates and what the key elements are that need to be replicated in the pilot sites.

Applicants should discuss how their model addresses the multiple problems of youth, such as involvement in crime, drugs, and alcohol; poor educational backgrounds; teenage pregnancy; lack of access to college; and lack of employment opportunities. Note that one mode is not necessarily expected to address all of these needs.

4. Target Population for Both Single and Multi-Site Grants

Economically disadvantaged, out-of-school youth ages 14–21 are the focus for the single site and multi-site grants. Out-of-school youth can include both high school dropouts and high school graduates.

5. Project Design for Both Single and Multi-Site Grants

The projects can focus on any number of solutions to problems facing out-of-school, economically disadvantaged youth. This solicitation is seeking both new ideas and ideas that have already been developed with a history of success.

The ideas must have measurable outcomes and services must be provided in an organized and high-quality manner. The services can be provide through the school system, through a recreation center in the community, or through a community center. It must, however, be able to attract the youth to be served and it must be easily assessable. Applicants are asked to:

a. Describe the program and its measurable goals/outcomes and strategy, including services to be provided to accomplish the goals;

b. Identify the key elements of the model that distinguish it and that would need to be part of any replication effort.

c. Identify how pilot sites will be selected;

d. Provide a description of the steps to be taken to recruit participants to encourage and promote maximum participation by at-risk youth who are currently under-served by education and training programs, and to determine customer need and customer satisfaction.

e. Describe design and implementation of the project, giving special attention to the feasibility of operating the project in a new locations.

f. Provide assurances that grant funds will be used to start a new service or to replicate an existing project in new location, not to fund an already existing site and/or existing services.

g. Applicants should be able to demonstrate on the basis of past or current experience that they have the capability to implement the project and achieve the goals and objectives of the project.

h. Describe the intake procedures, individualized assessment, and case management approach to be used by the project.

i. Discuss the performance measures to be used that may include: Youth returning to school, high school completion or equivalency; youth entering postsecondary institutions, apprenticeships, or other advanced training programs; youth placed in jobs; or youth participating in education, training and employment services. They may also include, reduced number of drug-related arrest, teenage pregnancies,

greater involvement in community activities, such as recreation and sports, study groups, cultural and theater activities, etc.

F. Rating Criteria for Award for Both Single and Multi-Site Grants

Applicants are advised that the selection of grantees for awards is to be made after careful review by a panel of specialists. Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their application. The panel results are advisory in nature to help establish a competitive range. The Grant Officer will make final awards based on what is in the best interests of the Government.

1. Quality of Program Model To Be Pilot-Tested

Proposals will be evaluated based on the applicant's justification that the proposed model can have a long-term difference in the lives of out-of-school youth. The model should be intensive and comprehensive enough to turn around the lives of youth. If the model is already in existence, discuss its effectiveness in serving youth. (30 points).

2. Quality of Implementation Plan for Pilot-Testing the Model

The plan should be structured for pilot-testing the program model. For single site pilot-tests under part II(E), the proposed site should be identified, and plans in place to implement the program. Matching funds should be committed, and the program operator identified. Coordination with other agencies should also be identified.

For multi-site pilots under Part II(E), the pilot sites do not need to be identified, but a structured plan needs to be presented as to how sites will be selected, and what coordination with other agencies will be sought. Coordination with other agencies should also be identified. (30 points).

3. Experience of Grant Applicant

Applicants should describe the experience both of the organization and of the staff that will be involved in the pilot program in dealing with out-of-school youth. An applicant should describe the success rate of the organization with such programs. (20 points).

4. Evaluation Approach and Planned Outcomes

The pilot project is intended to result in a measurable increase in outcomes for out-of-school, economically disadvantaged youth in the grantee's area. The discussion must include a clear description of the project performance goals and accomplishments and what outcome measures and planned evaluation approach will be used to assess how well the program has met its objectives. (15 points).

5. Need for Project in Pilot Sites

An applicant should describe the level of need for this project in the proposed pilot sites. It should discuss the population, such as age, gender, educational level, the project will serve. It should describe the economic and social dynamics, such as poverty, crime, school-drop-out, and teenage pregnancy rates, of the geographic area to be served. (5 points).

6. Matching Requirements

Applicants who fail to comply with the matching requirements set forth in the application process shall not be considered for award.

Part III—Reporting Requirements

The grantee shall furnish the reports and documents listed below:

A. Quarterly Financial Reports

The grantee shall submit to the Grant Officer Technical Representative (GOTR) within 30 days following the end of each quarter, three copies of a quarterly Financial Status Report (SF 269) until such time as all funds have been expended or the period of availability has expired.

B. Quarterly Progress Report

The grantee shall submit to the GOTR within 30 days following the end of each quarter, three copies of a quarterly progress report. Reports shall include the following in brief narrative form:

1. A description of overall progress of work activities accomplished during the reporting period.

2. An indication of current problems, if any, which may delay performance and proposed corrective action.

3. Program status and financial data/information relative to expenditure rate versus budget, anticipated staff changes, etc.

C. Preliminary Report (Draft Final)

This report shall summarize, in a format to be prescribed at a later date, project activities, evaluation findings, implications, conclusions, and recommendations resulting from the project work to date. It shall be submitted in an original and 2 copies to the Grant Officer 30 days before the expiration date of the grant.

D. Final Report

This report shall update information and reflect ETA comments in the draft final report. It should include a short executive summary. It shall be submitted in an original and 2 copies to the GOTR 30 days after the expiration date of the grant. Five percent of the Federal share of the grant is considered payment for the final evaluation report. Therefore, ETA will reimburse grantees in an amount not to exceed 95% of the grant amount until an acceptable draft final report is received.

Signed at Washington, DC, this 7th day of April 1994.

Janice E. Perry,

Grant Officer, ETA.

Appendices

A. SF–424, Application for Federal Assistance

B. SF–424A, Budget

BILLING CODE 4510–30–M

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ - ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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BUDGET INFORMATION – Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1. _____	$_____	$_____	$_____	$_____
2. _____	$_____	$_____	$_____	$_____

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT						
(E) SUPPLIES						
(F) CONTRACTUAL						
(G) OTHER						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

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[FR Doc. 94-8862 Filed 4-12-94; 8:45 am]
BILLING CODE 4510-30-C

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Proposed Planning Estimates

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed State planning estimates and allocation formula; request for comments.

SUMMARY: The Employment and Training Administration is publishing the proposed State planning estimates for Program Year (PY) 1994 (July 1, 1994 through June 30, 1995) for Job Training Partnership Act section 402 migrant and seasonal farmworker programs, the allocation formula, and the rationale used in arriving at the planning estimates.

DATES: Written comments on this notice are invited and must be received on or before May 13, 1994.

ADDRESSES: Written comments shall be submitted to Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 219–5500 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: As required by section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration publishes for comment the proposed State planning estimates for JTPA, section 402 migrant and seasonal farmworker programs in PY 1994. JTPA section 402 grantees were selected for a two-year designation period on July 1, 1993. Program Year 1994 is the second year of that designation period. Grantees which have performed satisfactorily during the first year of the designation period will be awarded grants in the second year after submittal of acceptable grant plans but without further competition.

Allocations

The allocations set forth in the appendix to this notice reflect the allocation formula described below. For PY 1994, $85,576,000 were appropriated for migrant and seasonal farmworker programs.

This amount is an increase of $7,273,000 above the appropriation for PY 1993. Each year since 1987, additional funds have been included to meet the demand for training and employment services to Special Agricultural Workers (SAWs) who became eligible for the program as a result of the Immigration Reform and Control Act of 1986. In addition, the reports of the House of Representatives and the Senate Committees on Appropriations on the Department of Labor's 1994 appropriations state that the committees expect the Department to continue the farmworker housing program. The Department concurs with this request.

The allocation formula is being applied to $81,148,000. The remaining $4,428,000 of the PY 1994 section 402 appropriation is being held in the section 402 national account to fund the housing program ($3,000,000), the Hope, Arkansas, Migrant Rest Center ($300,000), and other training and technical assistance projects.

Allocation Formula

The $81,148,000 formula total was allocated according to the following formula:

(1) $74,752,033 was allocated on a State-by-State basis. This is the same amount as was allocated for each State for PY 1993. This ensures programmatic stability by providing a funding base for each State at its PY 1993 level.

(2) $6,395,967 was allocated on a State-by-State basis. Thirty percent of this portion of the appropriation was based on the relative numbers of migrant and seasonal farmworkers in each State, as shown by 1980 Census data; and 70 percent was based on the relative numbers of SAWs in each State, as shown by the most recent Immigration and Naturalization Service data. This provides an equitable distribution of the additional funds available for PY 1994 for programmatic needs generated by the SAW program.

Formula Allocations in Out Years

For Program Year 1995 and beyond, the Department intends to update the allocation formula to incorporate more current data on the farmworker population. To this end, in April 1994, a special task force was convened to explore options for revising the formula and its bases. Findings from this task force will be reflected in future notices of planning estimates.

Signed at Washington, DC, this 6th day of April, 1994.

Doug Ross,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1994 MSFW ALLOTMENTS TO STATES

	PY 1994 base	PY 93–PY 94 increases	PY 1994 total
Alabama	925,004	32,269	957,273
Alaska	0	0	0
Arizona	1,640,434	196,710	1,837,144
Arkansas	1,362,948	48,368	1,411,316
California	15,066,663	2,573,000	17,639,663
Colorado	914,054	59,767	973,821
Connecticut	231,596	17,473	249,069
Delaware	136,435	6,622	143,057
District of Columbia	0	0	0
Florida	5,072,491	526,565	5,599,056
Georgia	1,948,488	120,734	2,069,222
Hawaii	291,884	12,291	304,175
Idaho	1,004,138	56,625	1,060,763
Illinois	1,549,304	174,399	1,723,703
Indiana	911,311	33,607	944,918
Iowa	1,536,801	52,209	1,589,010
Kansas	806,435	37,205	843,640
Kentucky	1,586,289	48,926	1,635,215
Louisiana	930,491	31,856	962,347
Maine	383,535	12,265	395,800
Maryland	346,605	23,680	370,285

U S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1994 MSFW ALLOTMENTS TO STATES—Continued

	PY 1994 base	PY 93–PY 94 increases	PY 1994 total
Massachusetts	382,068	42,299	424,367
Michigan	1,016,820	45,396	1,062,216
Minnesota	1,493,066	48,048	1,541,114
Mississippi	1,699,394	52,398	1,751,792
Missouri	1,281,751	41,451	1,323,202
Montana	782,547	24,038	806,585
Nebraska	901,895	34,886	936,781
Nevada	206,637	36,110	242,747
New Hampshire	132,014	4,112	136,126
New Jersey	417,029	66,590	483,619
New Mexico	661,381	62,430	723,811
New York	2,012,126	225,201	2,237,327
North Carolina	3,479,282	154,765	3,634,047
North Dakota	549,540	16,676	566,216
Ohio	1,057,779	36,244	1,094,023
Oklahoma	699,074	36,131	735,205
Oregon	1,203,763	111,187	1,314,950
Pennsylvania	1,412,023	64,613	1,476,636
Puerto Rico	3,431,574	121,261	3,552,835
Rhode Island	0	0	0
South Carolina	1,259,283	46,490	1,305,773
South Dakota	812,992	24,638	837,630
Tennessee	1,119,620	38,292	1,157,912
Texas	6,533,572	695,587	7,229,159
Utah	284,694	11,921	296,615
Vermont	250,075	7,589	257,664
Virginia	1,185,973	67,013	1,252,986
Washington	1,911,315	150,607	2,061,922
West Virginia	256,560	8,588	265,148
Wisconsin	1,437,538	48,480	1,486,018
Wyoming	235,742	8,355	244,097
Formula Total	74,752,033	6,395,967	81,148,000
TA/Housing	3,550,967	877,033	4,428,000
National Total	78,303,000	7,273,000	85,576,000

[FR Doc. 94–8863 Filed 4–12–94; 8:45 am]
BILLING CODE 4510–30–M

[SGA No. DAA 94–006]

Job Training Partnership Act: Microenterprise Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: The U.S. Department of Labor, Employment and Training Administration, under section 499 of the Job Training Partnership Act (JTPA) announces the availability of funds to implement and enhance community based microenterprise activities.

The grants will provide training, technical assistance, and support to microenterprise owners or potential owners. It is anticipated that up to six (6) awards, contingent upon resources being available for this purpose, will be made in the range of $250,000 to $300,000 per grant. Awards will be made on a competitive basis.

The duration of the grants will be for fifteen (15) months with the possibility of a one-year option. In order to receive a grant award, an applicant must include matching non-Federal contributions in an amount equal to 100 percent of Federal funds to be provided. All the information needed to submit a proposal is included in this announcement.

DATES: Application for grant wards will be accepted commencing April 13, 1994. The closing date for receipt of applications shall be June 13, 1994, at 2 p.m. (Eastern Time).

ADDRESSES: Applications shall be mailed to the Division of Acquisition and Assistance, Attention: Brenda Banks, Reference: SGA/DAA 94–006, Employment and Training Administration, U.S. Department of Labor, room S–4302, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Brenda Banks, Division of Acquisition and Assistance. Telephone (202) 219–8702 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) is soliciting proposals on a competitive basis for grants for projects to implement and enhance community-based microenterprise activities. For purposes of this solicitation, the term "microenterprise" means a commercial enterprise with five (5) or fewer employees, one (1) or more of whom owns the enterprise, and each of the owners of the enterprise is economically disadvantaged, as defined in section 4(8) of JTPA.

The intent of these grants is to provide effective business-related training and provide technical assistance and support to owners or potential owners of microenterprises. The grants are being awarded pursuant to section 499 of the Job Training Partnership Act (JTPA).

This announcement consists of five parts: Part I—Background, Part II—

Application Process, Part III—Statement of Work, Part IV—Evaluation Criteria, and Part V—Reporting Requirements.

Part I—Background

Pursuant to section 499 of JTPA, the Secretary of Labor awards grants to States to implement and enhance community-based microenterprise activities. Section 499 of JTPA also states that such activities shall be for the benefit of economically disadvantaged persons.

Accordingly, ETA intends to allocate approximately $1.5 million to States to implement and enhance community-based microenterprise activities. The statute specifies that such funds shall be used (nothwithstanding the restrictions of section 141(q) of JTPA) to:

(1) Train program staff in such entrepreneurial activities as business plan development, business management, resource inventory design, and marketing approaches, and other activities necessary to provide effective training to persons developing a microenterprise;

(2) Provide to owners or potential owners of a microenterprise such technical assistance (including technical assistance with respect to business planning, securing funding, marketing, and production of marketing materials) and other assistance as may be necessary to develop microenterprise activities; and

(3) Provide other microenterprise support (such as peer support program and counseling).

Part II—Application Process

A. Eligible Applicants

Awards under this Solicitation will be made to "States," as defined in section 4(22) and section 499(g)(2) of JTPA. For the purposes of this Solicitation, section 499(g)(2) entities shall include:

1. Grantees designated under subsection (c) or (d) of section 401 of JTPA to provide services to Indian reservations or Alaska Native villages, or a consortium of such grantees and the State; and

2. Grantees designated under section 402(c) of JTPA to provide services to migrant seasonal farmworkers, or a consortium of such grantees and the State.

A proposal shall be submitted by the Governor or, in the instance of a grantee designated under section 401 or 402, by the grantee. In the instance of a consortium between the State and section 401 and 402 grantees, a proposal shall be accomplished by a letter from the Governor ratifying such an arrangement and specifying the agency primarily responsible for the conduct of the project.

When the Governor submits a proposal on behalf of the State, he or she shall designate the agency which shall be responsible for conducting the project. No more than two proposals may be submitted per eligible applicant.

A State may specify a political subdivision (county, city, town, township, parish village, etc.) or economic division such as a Service Delivery Area, an Enterprise Community or an Empowerment Zone as the focus of training activity in its proposal.

B. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts.

Part I shall contain the cost proposal, consisting of the following items: Standard Form (SF) 424, "Application for Federal Assistance" (Appendix No. 1) and SF 424A, "Budget" (Appendix No. 2). Also, the budget shall include on a separate page(s) a detailed enumeration of how the matching requirement will be fulfilled. The individual signing the SF 424 on behalf of the State shall represent the responsible financial and administrative entity for the grant should that proposal result in an award.

Part II shall contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work contained in this announcement. Applicants are strongly encouraged to submit a technical proposal of less than thirty (30) pages in length (exclusive of appendices) which sets forth the applicant's explanation of how it proposes to accomplish the elements described in the Statement of Work.

No cost data or reference to price shall be included in the technical proposal. In order to assist applicants in preparing their proposals and to facilitate the expeditious evaluation by the review panel, proposals should be organized and presented in the same sequential order as the Evaluation Criteria in Part IV of this announcement.

C. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time by June 13, 1994. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed by the 15th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

E. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an applicant or an authorized representative thereof, if the representative's identity is made known

and the representative signs a receipt for the proposal before award.

F. Period of Performance

The period of performance will be fifteen (15) months from the date of execution.

G. Funding

DOL has set aside up to $1.5 million to be disbursed, contingent upon resources being available for this purpose. It is anticipated that grant awards will be in the $250,000 to $300,000 range.

H. Option to Extend

Based on the availability of funds, effective program operation, and the needs of the Department, the grant(s) may be extended for up to one (1) additional year.

I. Matching Requirement

In order to receive a grant award, an applicant must include matching non-Federal contributions in an amount equal to 100 percent of Federal funds to be provided.

Part III—Statement of Work

The primary goal of this initiative is to assist economically disadvantaged individuals in establishing and maintaining microenterprises. Proposals must contain a clear statement of the need for such a project, together with the identification of the proposed service delivery strategy to accomplish the primary goal and to meet this stated need. They should also enumerate sources of start-up capital for new microenterprises, such as community-based credit providers.

Proposals should detail new methods and techniques for the States to focus on the entrepreneurial training needs of disadvantaged individuals. The Department is aware that most States already possess some organizational capacity and staffing to assist generally in the formation and development of small business activity, most notably through the Small Business Development Centers described in the next segment.

An applicant should not attempt simply to add to this existing State assistance. Rather, and applicant must demonstrate in its proposal how the proposed training is necessary in assisting economically disadvantaged individuals to establish and maintain microenterprises.

A. Activities

The proposal should present a clear discussion of what activities related to microenterprise and economic development are already functioning within the State and how this new initiative will link those activities and add a new dimension to them. Examples of such activities include:

(1) Empowerment Zones and Enterprise Communities as authorized by Title XIII of the Omnibus Budget Reconciliation Act of 1993. Their mission is to provide favorable Federal income tax treatment and other incentives to encourage the conduct of trades or businesses and general economic development within designated areas.

(2) Small Business Development Centers (SBDC) as authorized by the Small Business Act of 1953 as amended. Their stated mission is to provide management assistance to prospective and small business owners through one-on-one counselling and specialized training efforts.

(3) Economic Development Districts (EDD) as authorized by the Public Works and Economic Development Act of 1965, as amended. EDDs serve as the structural entities for formulating and implementing economic development plans and activities within boundaries.

These examples represent some of the types of existing activities and resources that may be considered in developing a proposal under this solicitation.

B. Resources

Applicants are strongly encouraged to be exhaustive in examining available related resources and ongoing activities in order to maximize the potential impact of a microenterprise. The resources that the State will provide to meet the 100 percent matching requirement should be discussed in some detail providing a clear understanding of what is to be provided and what the relevance/linkage of these resources is to the activities proposed and to successfully meeting the primary goal of the project.

C. Services and Techniques

Applicants shall specify the services and techniques they propose to provide to meet the goal of aiding economically disadvantaged individuals with microenterprises. Examples of key services and techniques that may be included in a proposal are:

(1) Recruitment and screening. This is an important element both in identifying program staff to be trained as trainers and in identifying and selecting individuals who show potential for owning an microenterprise.

(2) Case management. This would involve assigning an individual who provides guidance in all aspects of program participation and other services to microenterprise owners.

(3) Follow-up. Enrollment in and successful completion of a microenterprise training program may well be only the initial challenges facing the entrepreneur. A structured follow-up program involving such counseling and supportive services as deemed appropriate is a critical aspect of the program.

(4) Mentoring. This could involve assigning a volunteer businessperson from the community to serve in a one-on-one relationship with the new entrepreneur. Such volunteer service may not be considered for meeting the 100 percent matching requirement.

Part IV—Evaluation Criteria

Prospective applicants are advised that the selection of grantees for award is to be made after careful evaluation of proposals by a panel of specialists within DOL. The panelists will evaluate the proposals in accordance with the elements set forth in the Statement of Work. The panel results are advisory in nature and not binding on the Grant Officer.

A. Ability to Conduct and Monitor the Microenterprise Activities (45 Points)

(1) The proposal must describe in specific terms the service delivery strategy that the applicant would utilize to implement its ideas. The applicant must clearly state, particularly when discussing staff training for implementation of proposed microenterprise activities, how this activity will create a new capacity for the State to conduct such training. The proposal must provide assurances that resources under this grant will not be used to substitute for an ongoing commitment to maintain an economic development capacity. (30 points)

(2) The application must also contain a clear statement of the need for such a project, including the degree to which the service delivery strategy will assist in meeting that need. (15 points)

This overall discussion will be the measure for determining the ability to conduct and monitor such activities.

B. Evidence of State Commitment, As Shown Through Existing or Proposed Related Programs and Support (25 Points)

This section must include a detailed discussion of the coordination and linkages between programs and community organizations, as well as a discussion of the organizational capacity which the State intends to devote to this project. The emphasis under this criterion will be on programmatic resources which might enhance the training aspects of a project. As noted earlier, it is recognized that most applicants have some form of economic development capacity already in place.

C. Evidence of Linkage(s) to Private, Community-Based Credit and Technical Assistance Providers (10 Points)

Discussion of what financial resources are available to provide new

microenterprises with start-up capital, such as a consortium of banks which have pledged to assist in this process.

D. Size of Non-Federal Matching Fund Contributions (10 Points)

In order to receive a grant award, an applicant, at a minimum, must include matching non-Federal contributions in an amount equal to 100 percent of Federal funds to be provided. Applicants who propose to provide the minimum amount for matching non-Federal contributions will receive five (5) points under this criteria. If the non-Federal contributions are greater than 100 percent of the Federal funds to be provided, applicants may receive up to an additional five (5) points under this criteria.

The cost proposal must contain a detailed discussion of the size, nature, and quality of the non-Federal match. Proposals not presenting a detailed discussion of the non-Federal match or not meeting the statutory requirement of a 100-percent match will be considered nonresponsive.

E. Cost (10 points)

The cost effectiveness of the project as indicated by cost per participant and cost per activity in relation to services provided and outcomes anticipated.

Offerors are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The panel's evaluations are only advisory to the Grant Officer. The final decisions for grant award will be made by the ETA Grant Officer, after considering the panelists' scoring decisions. The Grant Officer's decisions will be based on what he or she determines is most advantageous to the Federal Government.

Part V—Reporting Requirements

The Grantee is required to provide reports and documents listed below:

A. Quarterly Financial Reports

The grantee shall submit to the Grant Officer's Technical Representative (GOTR), within 30 days following the end of each quarter, three (3) copies of a quarterly Financial Status Report (SF 269), until such time as all funds have been expended or the period of availability has expired.

B. Quarterly Progress Reports

The grantee shall submit to the GOTR within 30 days following the end of each quarter, three (3) copies of a quarterly progress report which provides a detailed account of services provided during each quarter of grant performance. Reports shall include the following in brief narrative form:

(1) A description of overall progress of work activities accomplished during the reported period.

(2) An indication of current problems, if any, which may delay performance and any proposed corrective action.

(3) Program status and financial data/information relative to expenditure rate versus budget, anticipated staff changes, etc.

C. Final Report

Each grantee shall submit, for the initial grant period for which funds are received, a final report that includes at a minimum a description of:

(1) The programs that have been established and developed with such funds, including a description of the persons participating and the microenterprise developed;

(2) The quantitative and qualitative benefits of such programs;

(3) The contributions of such programs to economic self-sufficiency and economic development;

(4) The types of services provided and an assessment of how well they worked in assisting participants to establish their own microenterprises;

(5) The characteristics of the individual participants served;

(6) Measures of pre- and post-program income (e.g., wage rates, business income, total income, etc.); and

(7) The key lessons learned, including significant impediments, barriers or other problems experienced, and the measures used to address and/or overcome them.

This final report is due in draft no later than 45 days prior to the conclusion of the initial grant period. Three (3) copies of this report shall be due no later than the conclusion of the grant period. In the event the Government exercises its option to extend the grant, the grantee shall submit the final report at the conclusion of the option year.

Signed at Washington, DC, this 7th day of April.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

A. SF–424, Application for Federal Assistance

B. SF–424A, Budget

BILLING CODE 4510–34–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BUDGET INFORMATION – Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1. _____	$ _____	$ _____	$ _____	$ _____
2. _____	$ _____	$ _____	$ _____	$ _____

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT						
(E) SUPPLIES						
(F) CONTRACTUAL						
(G) OTHER						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

[FR Doc. 94-8865 Filed 4-12-94; 8:45 am]
BILLING CODE 4510-30-C

DEPARTMENT OF LABOR

[SGA No. DAA 94–005]

Employment and Training Administration

Job Training Partnership Act: Model Apprenticeship Instruction Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), under Title IV, part D, of the Job Training Partnership Act (JTPA) is soliciting proposals for the development of model training materials to assist high school students who may not attend college to learn about the carpentry trade and how to perform in it and, in so doing, to facilitate their entry into the work force.

Funding for this solicitation will come from Title IV, part D of JTPA. DOL has set aside up to $300,000 for this competitive procurement. As a result of this solicitation, one (1) award will be made for a period of fifteen (15) months with the possibility of two (2) option years.

DATES: Application for grant awards will be accepted commencing April 13, 1994. The closing date for receipt of applications shall be May 16, 1994, at 2 p.m. (Eastern Time).

ADDRESSES: Applications shall be mailed to the Division of Acquisition and Assistance, Attention: Willie E. Harris, Reference: SGA/DAA 94–005, Employment and Training Administration, U.S. Department of Labor, room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Willie E. Harris, Division of Acquisition and Assistance. Telephone (202) 219–8702 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts: Part I—Background, Part II—Application Process, Part III—Statement of Work, Part IV—Evaluation Criteria, and Part V—Reporting Requirements.

Part I—Background

Seventy-five percent of America's young people do not achieve a college degree. Many of these young people are not equipped with the basic academic and occupational skills needed in an increasingly complex labor market. It is well established that the low-skill, high-paying manufacturing jobs that once provided decent employment for relatively unskilled Americans no longer exist.

Therefore, many high school graduates do not find stable, career-track jobs for five to ten years after graduation. In today's highly competitive global economy, business performance is determined in large part by the knowledge and skills of workers. The technological pressures make employers reluctant to take a chance on inexperienced high school graduates whose diplomas signal nothing about their skills, knowledge, and ability to perform increasingly difficult work.

The lack of effective tools to aid high school students gain the necessary skills to enable them in making the transition from school to work successfully has also had a significant economic impact on those students. In the 1980s, the gap in earnings between high school graduates and college graduates doubled; for those without high school diplomas, the gap grew even wider.

Congress took cognizance of this lack of a comprehensive and effective school-to-work transition system in report language accompanying the Department of Labor's Fiscal Year 1993 appropriation legislation in referring to programs that would benefit high school students who may not attend college. Such programs would ideally offer junior and senior year high school students the opportunity to begin learning a trade while still in school and, upon their graduation, they would have the opportunity to be placed in a full-time registered apprenticeship program.

In addition, school-to-work programs assist students in making the transition from school to a good first job on a high skill, high wage career track. Combining learning at the worksite with learning in school, school-to-work programs establish a partnership between schools and employers and prepare students for either a high quality job requiring technical skills or further education and training.

Part II—Application Process

A. Eligible Applicants

The award under this competition will be made to a non-profit organization.

B. Submission of Proposal

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts:

Part I shall contain the cost proposal, consisting of the following items: Standard Form (SF) 424, "Application for Federal Assistance," and SF 424A, "Budget" (Appendix A). Also, the budget shall include on a separate page(s) a detailed cost analysis of each line item in the budget.

Part II shall include a technical proposal that demonstrates the offeror's capabilities in accordance with its Statement of Work contained in this announcement. Applicants are strongly encouraged to submit a technical proposal of less than thirty (30) pages in length (exclusive of appendices) which sets forth the applicant's explanation of how it proposes to accomplish the elements described in the Statement of Work.

No cost data or reference to price shall be included in the technical proposal. In order to assist applicants in the preparation of their proposals and to facilitate the expeditious evaluation by the review panel, proposals should be organized and presented in the same sequential order as the Evaluation Criteria in Part IV of this announcement.

C. Hand-Delivered Proposals

Proposals must be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time by May 16, 1994. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed by the 15th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working day prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both

postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" on both the receipt and the envelope or wrapper.

E. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

F. Period of Performance

The period of performance will be 15 months from the date of the grant award.

G. Funding

DOL has set aside up to $300,000 for this competitive procurement.

H. Option To Extend

Based on the availability of funds, effective program operation and the needs of DOL, the grant may be extended for up to two option years.

Part III—Statement of Work

The primary focus of this grant will be to develop model materials, including interactive videos and slides, in carpentry aimed at facilitating the transition from school to a registered apprenticeship program appropriate for use by all high school juniors and seniors not planning to attend college. For purposes of this solicitation, a "registered apprenticeship program" is defined as one registered by the Bureau of Apprenticeship and Training in the Department of Labor or by a State apprenticeship agency recognized and approved as the appropriate body for State registration and approval of local apprenticeship programs and agreements for Federal purposes.

A. Deliverables

The principal deliverable for this grant shall be a comprehensive curriculum for an instructional program in carpentry. The deliverable shall include:

1. Phased sets of interactive video materials that will provide a substantial introduction to carpentry;
2. Accompanying materials to include supplemental workbooks and testing materials to enable the student to progress on a self-paced basis and to evaluate his or her own progress in the course; and
3. Certification testing materials including hands-on projects to enable an instructor to determine whether the student has gained enough knowledge to receive credit for that portion of the curriculum.

While not mandatory, favorable consideration will be given to those proposals which include an additional certification process that also provides a student entry into a registered apprenticeship program after successfully completing the secondary school curriculum.

In demonstrating various tasks associated with carpentry, the materials should take into account recent technical advances in the development of tools and materials and appropriate safety and health standards and procedures that are in consonance with the use of those tools and materials. Within budgetary and other relevant constrains, the materials developed should be state of the art, taking full advantage of modern audio-visual instructional technology.

Part IV—Evaluation Criteria

Prospective offerors are advised that the selection of the grantee for the award is to be made after careful evaluation of proposals by an evaluation panel within DOL. Each panelist will evaluate the proposals based on the following factors:

A. Technical Approach (40 Points)

The proposal shall describe in detail the curriculum to be established which is aimed at facilitating the transition from school to a registered apprenticeship program. In addition, if the proposal contains a certification process which provides that a student who successfully completes the secondary school curriculum will be afforded entry into a registered apprenticeship program, the process should be fully explained.

B. Coordination and Linkages (20 Points)

The proposal should enumerate established or proposed linkages with existing registered apprenticeship programs and with regional and national associations representing secondary education.

C. Organizational Capacity (20 Points)

The proposal must provide a background description of how the particular entity which will have responsibility for this project is organized and the types and quality of services it provides. Background in general areas related to training and apprenticeship such as labor-management relations or in specific areas such as in-depth experience in apprenticeable crafts should be enumerated. Specific examples of projects similar to the one proposed for support that offeror has administered should be included.

D. Experience (20 Points)

The proposal must identify proposed staff and provide a discussion of staff experience in the areas of apprenticeship programs and their capacity to develop model training materials, including interactive videos and slides. It should also enumerate the facilities needed to conduct the project. These resources should be adequate to the work described in the application. The staff would have the required skills and demonstrated ability to produce the expected outcomes. The staffing pattern must clearly link responsibilities to project tasks.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The panel results are advisory in nature and not binding on the Grant Officer. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer.

Part V—Reporting Requirements

The grantee shall furnish the reports and documents listed below:

A. Quarterly Financial Reports

The grantee shall submit to the project officer within 30 days following the end of each quarter, three copies of a quarterly Financial Status Report (SF 269) until such time as all funds have been expended or the period of availability has expired.

B. Quarterly Progress Reports

The grantee shall submit to the project officer within 30 days following the end of each quarter, three copies of a quarterly progress report. Reports shall include the following in brief narrative form:

(1) A description of overall progress of work activities accomplished during the reporting period.

(2) An indication of current problems, if any, which may delay performance and proposed corrective action.

(3) Program status and financial data/information relative to expenditure rate versus budget, anticipated staff changes, etc.

C. Final Report

A draft final report which summarizes project activities and results of the project shall be submitted 60 days before the expiration date of the grant award. The final report shall be submitted in 3 copies by the expiration of the grant.

Signed at Washington, DC, this 7th day of April.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

A. SF–424, Application for Federal Assistance

B. SF–424A, Budget

BILLING CODE 4510–10–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

BUDGET INFORMATION – Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1. _____	$_____	$_____	$_____	$_____
2. _____	$_____	$_____	$_____	$_____

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT						
(E) SUPPLIES						
(F) CONTRACTUAL						
(G) OTHER						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

[FR Doc. 94–8866 Filed 4–12–94; 8:45 am]
BILLING CODE 4510–10–C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–30, et al.; Exemption Application No. D–8865, et al.]

Grant of Individual Exemptions; Operating Engineers Pension Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Operating Engineers Pension Trust (the Plan) Located in Pasadena, California

[Prohibited Transaction Exemption No. 94–30; Application No. D–8865]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the leasing by the Plan of mobile home lots (the Lots) at mobile home parks (the Parks) owned and to be owned by the Plan to active participants (the Actives) in the Plan who are parties in interest thereto within the meaning of section 3(14)(H) of the Act because they are employees of employers who contribute to the Plan, provided: (a) leases with Actives will be on the same basis as transactions engaged in with the general public, utilizing standard form lease agreements and with rental rates determined according to the existing market; (b) the transaction will cover only those Plan participants who are parties in interest because they are employees of a contributing employer to the Plan, and no Lots will be leased to Plan fiduciaries, officers, directors or 10 percent shareholders of contributing employers to the Plan or to persons who are parties in interest for any reason other than that they are employees of a contributing employer; (c) the leases ordinarily will be for relatively short, one year terms, and the Plan will adjust rental rates annually based on experience with market conditions; (d) no Lot will be leased to an Active unless the lease is approved by Buss-Shelger Associates (the Manager), the independent fiduciary who will also monitor such lease to assure that its terms, and enforcement thereof, are at least as favorable to the Plan as those the Plan could obtain in similar transactions with unrelated parties; (e) neither Mr. Ronald L. Buss, President of the Manager, nor the Manager is related to any employer who contributes to the Plan or to the International Union of Operating Engineers or its Local Union No. 12 (collectively, the Union), and the Manager does not derive any of its income from the Union or from any such employer; (f) no more than 50 percent of the Lots in the Parks will be leased to Actives; and (g) no more than 1 percent of Plan assets will be involved in leases to Actives.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and any requests for a hearing on the proposed exemption. The applicant represents that interested persons were provided with a copy of the Notice, plus a copy of the supplemental statement (the Supplemental Statement), as required pursuant to 29 CFR 2570.43(b)(2), either through first class mailing of such documents or through publication of such documents in the bi-monthly Union newsletter, "News-Record." The newsletter was also distributed to various Union offices and hiring halls. All written comments and requests for a hearing were to have been received by the Department by February 1, 1994, based on an anticipated publication date of December 17, 1994, for the newsletter containing the Notice and the Supplemental Statement. Subsequently, the applicant notified the Department that the publication of the newsletter had been delayed and that the newsletter was not actually mailed to interested persons until January 5, 1994. In light of this fact, the Department determined to extend the comment period on the proposed exemption until February 28, 1994, to ensure that all interested persons had sufficient time to comment on the proposed exemption. In this regard, the Department required the applicant to notify interested persons of the extended comment period by enclosing a notice of extension of time to comment (the Notice of Extension of Time) with each monthly report form mailed to contributing employers, by asking employers to post the Notice of Extension of Time or distribute it to employees, and by posting the Notice of Extension of Time together with a copy of proposed exemption in all Union offices and hiring halls. In a letter dated January 31, 1994, the applicant notified the Department that it had completed notification to all interested persons as required by the Department.

As of the close of the comment period on February 28, 1994, the Department had received one letter from an interested person commenting on the proposed exemption and requesting a hearing. In the opinion of the commentator the transaction involved a highly speculative investment in real property that would jeopardize the ability of the Plan to provide stable retirement pension income to participants and beneficiaries.

The Department forwarded a copy of the commentator's letter to the applicant and requested that the applicant address

in writing the concerns raised by the commentator. In response, the applicant stated that the general concern of the commentator regarding the Plan's purchase of the Lots and construction of the Parks was not at issue in the application, as relief was requested only for the lease of the Lots to Actives who are parties in interest solely because they are employees of contributing employers to the Plan. With respect to the leasing of Lots to Actives by the Plan, the applicant points out that no fiduciary or other party in interest except Actives will be allowed to lease Lots from the Plan. Further, an independent fiduciary will be required to review the leases to Actives and the number of such leases will be limited. The transactions would involve a very small percentage of the assets of the Plans. In the opinion of the applicant, the requested exemption would make the Plan's investment more productive by increasing the rental income to the Plan and would permit the Actives to decide whether to live in one of the Parks, rather than being prohibited from doing so.

With respect to the purchase of the Lots by the Plan and construction of the Parks, the applicant maintains that such an investment by the Plan was not a prohibited transaction and did not require an exemption. In the opinion of the applicant, there is substantial evidence in the application file which addresses the propriety and attractiveness of the purchase by the Plan of the Lots and the construction of the Parks, which took into account the Plan's portfolio and the general investment objective to achieve the highest rate of return commensurate with safety of principal over the long term. In this regard, it is represented that the investment satisfied the Plan guidelines requiring diversification and profitability, and that the Board of Trustees made such determination, after considering independent professional investment advice.

In addition to commenting on the transaction, the commentator requested the Department schedule a hearing on the matter. The Department notes that in its final regulation on procedures for filing and processing prohibited transaction exemption applications, 29 CFR 2570.46, there is no provision for a hearing unless the exemption is from the fiduciary self-dealing prohibitions of section 406(b) of the Act. This exemption does not grant relief from section 406(b) of the Act. Further, the Department does not believe that any issues have been raised which would require the convening of a hearing.

Accordingly, after giving full consideration to the record, including the comment by an interested person and the responses of the applicant, the Department has determined to grant the exemption, as described herein. In this regard, the comment submitted to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on October 29, 1993, 58 FR 58190.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

CS Holding and its Worldwide Affiliates Headquartered in Zurich, Switzerland

[Prohibited Transaction Exemption 94 -31; Exemption Application No. D–9605]

Exemption

CS Holding and each of its affiliates (collectively, CS Holding), except Banque Leu Luxembourg (BLL), shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy Section I(g) of PTE 84–14, as a result of affiliation with BLL, including any current or future affiliate of CS Holding, other than BLL, which is, or in the future may become, eligible to serve as a QPAM under PTE 84–14.

EFFECTIVE DATE: This exemption is effective as of December 17, 1993.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 9, 1994 at 59 FR 6049.

WRITTEN COMMENTS: The Department received one written comment and no requests for a hearing. The comment was submitted on behalf of the applicant, CS Holding, in supplementation of the Notice of Proposed Exemption (the Notice). The matters addressed in the applicant's comment are summarized as follows:

1. The Notice indicated that the location of CS Holding and Affiliates is New York, New York. The applicant states that the corporate headquarters of CS Holding is actually located in Zurich, Switzerland, and its affiliates operate in a variety of worldwide locations. Accordingly, the exemption heading has been amended to include this information.

2. The operative exemption language in the Notice concluded with the following phrase: "* * * including any current or future affiliate of CS Holding, other than BLL, which in the future may become eligible to serve as a QPAM under PTE 94–14." The applicant requests, in the interests of completeness and accuracy, that the words "is or" be inserted between the words "which" and "in". In response to this request, the operative exemption language in the final exemption includes the requested insertion, and the phrase reads as follows: "* * * including any current or future affiliate of CS Holding, other than BLL, which is, or in the future may become, eligible to serve as a QPAM under PTE 94–14."

3. The Notice states that the proposed exemption was requested "on behalf of CS Holding affiliates that are banks, investment banking firms, or registered investment advisers which are or may become eligible to serve as QPAMs." The applicant comments that it is more accurate to state that the proposed exemption was requested "on behalf of CS Holding affiliates that include banks, investment banking firms, and investment advisers which are, or may become, eligible to serve as QPAMs."

After consideration of the entire record, the Department has determined to grant the exemption, as supplemented by the applicant's comment.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Richmond, Fredericksburg and Potomac Railway Company Employee Thrift and Investment Plan (the Plan) Located in Richmond, Virginia

[Prohibited Transaction Exemption 94–32; Application No. D–9578]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Plan of a guaranteed investment contract, No. GA–5250 (the GIC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit) to the Richmond,

Fredericksburg & Potomac Corporation (RFP), a party in interest with respect to the Plan; provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GIC at the time of the sale; (3) the Plan's trustee, acting as independent fiduciary for the Plan, has determined that the proposed sale price is not less than the current fair market value of the GIC; and (4) the Plan's trustee has determined that the proposed transaction is appropriate for and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 9, 1994 at 58 FR 6074.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.).

Stroh Brewery Company, Inc. Salaried Employees' Thrift Plan (the Plan) Located in Detroit, Michigan

[Prohibited Transaction Exemption 94–33; Exemption Application No. D–9580]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain pooled fund units from the Plan to Stroh Brewery Company, Inc., a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (1) all terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction; (2) the Sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with this transaction; and (4) the Plan receives a sales price equal to the fair market value of its residual interest in the Morgan Guaranty Trust Company of New York Convertibles Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 9, 1994 at 59 FR 6049.

EFFECTIVE DATE: This exemption is effective as of December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 8th day of April, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–8843 Filed 4–12–94; 8:45 am]

BILLING CODE 4510–29–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 21, 1994, through April 1, 1994. The last biweekly notice was published on March 30, 1994 (59 FR 14884).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By May 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (**Project Director**): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this ction, see the application for mendment which is available for ublic inspection at the Commission's ublic Document Room, the Gelman uilding, 2120 L Street, NW., Vashington, DC 20555, and at the local ublic document room for the particular acility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: February 18, 1994

Description of amendment requests: The proposed amendment would modify Technical Specifications (TS) 5.3.1, Fuel Assemblies, and TS 5.6.1, Criticality. In addition, the proposed Amendment would add a new Technical Specification 3/4.9.13, Boron Concentration-Storage Pool, and its associated BASES. This proposed amendment is requested to allow credit to be taken for burnup of spent fuel assemblies in establishing storage locations within the PVNGS spent fuel pools.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Radiological consequences of the fuel handling accident are not impacted by the formation of new storage regions since the fuel assembly design is unchanged. However, even though the probability of occurrence of a fuel misplacement error has increased slightly, the consequences are markedly reduced by the crediting of 2150 ppm of soluble boron in the spent fuel storage pool. The increase is also not significant because of the types of administrative controls being put into place in Regions 2 and 3. Furthermore, a fuel assembly misplacement error is not considered an accident, as defined in the UFSAR.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No changes are being made to the fuel assemblies or the storage racks, and controls will be employed to control the placement of assemblies in Regions 2 and 3. As such, there is no possibility of a new or different kind of accident being created. The existing design basis covers all possible accident scenarios in the spent fuel storage pool.

Standard 3—Involve a significant reduction in a margin of safety.

This amendment request will not involve a significant reduction in a margin of safety. There is no reduction in the margin of safety since a k_{eff} less than or equal to 0.95 is met under all analyzed conditions using conservative assumptions which do not credit the soluble boron in the spent fuel storage pool except under some accident conditions, as allowed by NRC guidelines. The original mechanical analyses are unchanged for thermal and seismic/structural considerations, as these analyses were originally performed for a fully loaded spent fuel storage pool.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999

NRC Project Director: Theodore R. Quay

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: March 11, 1994

Description of amendment request: The proposed amendments would revise Technical Specification 3/4.7.D, "Primary Containment Isolation Valves." The proposed amendments will add check valves installed in the reference leg instrumentation line. The valves have been installed as part of the modifications required to meet NRC Bulletin (IEB) 93–03.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed license amendment adds the reference leg backfill check valves to the Technical Specifications. As such, the proposed amendment does not change the probability nor does it change the consequences of any previously evaluated accident for Dresden and Quad Cities Stations.

The proposed modifications (and proposed Technical Specification amendments) add reference leg backfill instrument lines and check valves to the reactor vessel level instrumentation. The proposed modifications will eliminate the phenomenon described in IEB 93–03 (dissolved gases in the [Reactor Vessel Instrumentation System] RVLIS piping may produce uncertainties in the level instrumentation during RPV depressurization) by providing degassed Control Rod Drive (CRD) water to the RVLIS reference leg piping. The proposed design ensures that a continuous column of water, free of non-condensible gases is maintained in the RVLIS reference leg piping. As such, the proposed modifications do not affect any accident precursors or initiators. Therefore the proposed modifications for the reference leg backfill instrument lines do not increase the probability of any previously evaluated accidents for Dresden Station and Quad Cities Station.

The proposed plant modifications for the reference leg backfill check valves will not increase the radiological consequences of any previously evaluated accident. The radiological impact from a reference leg backfill instrument line break is bounded by Dresden's and Quad Cities' Instrument Line Break analysis (UFSAR Section 15.6.2). Therefore, the proposed plant changes will not increase the consequences of any previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed modification connects the non-safety-related CRD system to each safety-related division of RPV instrumentation and Feedwater Level Control System. The backfill check valves will eliminate the potential for reference leg leakage if CRD piping integrity is lost. These check valves are classified as safety-related and will be maintained and controlled such that overall plant safety is maintained. The addition of the reference leg backfill check valves to the Technical Specifications does not create the possibility of a new or different kind of accident for Dresden Station or Quad Cities Station.

(3) Involve a significant reduction in the margin of safety because:

Primary containment integrity is not compromised by the addition of a pair of check valves that provide isolation for the reference leg backfill lines. These valves have been demonstrated to meet the intent of the criteria specified in General Design Criterion (GDC) 55. The maintenance and control applied toward all the reference leg backfill check valves ensures that overall plant safety is maintained. Therefore, the addition of the

reference leg backfill valves to Technical Specification 3.7.D.1 and 3.7.D.2 does not reduce the margin of safety for Dresden Station or Quad Cities Station.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: March 26, 1993

Description of amendment request: The proposed amendments would revise Technical Specification 3/4.6 for Dresden and Quad Cities Stations to allow Single Loop Operation (SLO) with the recirculation loop suction and discharge valves open. The amendments would also delete outdated and unnecessary portions of Technical Specification 3.6.H for Dresden, Units 2 and 3, and provide more consistency to the BWR Standard Technical Specifications (NUREG–0213, Revision 4).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Commonwealth Edison has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed change to delete the requirement to close the suction valve of the idle loop during SLO potentially affects two transient or accident analysis previously evaluated. The first is the Loss-of-Coolant Accident (LOCA) which has been analyzed for the full range of break sizes, from a small rupture, where the makeup flow is greater than the coolant loss rate, to the largest, a highly improbable circumferential recirculation line break. The design basis LOCA at Dresden and Quad Cities is the double-ended guillotine break in a recirculation line. LPCI is one of the Emergency Core Cooling Systems that would be initiated to flood the core following the Design Basis LOCA accident.

The LOCA analysis for Quad Cities, Units 1 and 2, takes no credit for closure of the recirculation suction valve to properly direct LPCI flow into the lower plenum of the reactor. Instead, the LPCI loop selection logic is relied upon to automatically close the recirculation discharge valve of the selected intact loop. For Dresden, Units 2 and 3, LPCI is not credited to inject because the limiting failure is the LPCI injection valve. The LOCA ECCS analyses previously performed for SLO remain applicable and the severity of a postulated LOCA event has not increased. The proposed changes do not physically change the plant in any manner that would increase the probability of a LOCA.

The second transient considered is the inadvertent startup of an idle recirculation pump in an unisolated loop. This event is precluded, however, when the loop is unisolated because the discharge valve must be closed for the pump to start. To further decrease the probability of the occurrence of this transient, Section 3.6.H.3.e is added to require the pump to be electrically prohibited from starting. In addition, leaving the loop unisolated results in an increase in the temperature of the water in the loop, and a correspondingly lower reactivity insertion should the transient occur. For these reasons, neither the probability nor the consequences of an inadvertent idle pump start have increased.

The additional requirements introduced in Section 3.6.H.5.a-b and 4.6.H.5 to monitor temperatures between the two loops and the reactor coolant do not cause an increase in the probability or consequences of an accident because they limit stresses in the vessel and primary piping system to acceptable levels.

The procedures that are currently followed at Dresden, Units 2 and 3, regarding inadvertent entrance into a region of instability, defined as Region A, B, and C in Reference (e), are more conservative than those recommended by the NRC Bulletin, and do not allow operation in the stability regions defined in the Dresden Technical Specifications. Removing Sections 3.6.H.3.b-c and Section 4.6.H.3 only removes outdated material from the Dresden Technical Specifications and does not increase the probability or consequences of an accident previously evaluated.

The removal of Section 3.6.H.4 allowing operation without forced circulation below 25% of rated power at Dresden, Units 2 and 3, will not increase the probability or consequences of an accident previously evaluated. This change is conservative because it will prohibit operation in a condition susceptible to instabilities. This section also is not included in the Standard Technical Specifications. In the same manner, Section 2.1.A.4 is removed from the Quad Cities Technical Specifications.

The removal of Section 3.6.H.3.a from the Dresden Technical Specifications will not increase the probability or consequences of an accident, because a one-pump run-up transient is bounded by the two-pump run-up transient.

The change in initiation time for SLO requirements for Quad Cities from 12 hours to 24 hours does not represent a significant change, and still allows adequate time to implement the requirements. Therefore, no increase in the probability or consequences of an accident will be caused by this change.

For the reasons stated above, no increase in the probability or consequences of an accident previously evaluated is introduced by the proposed changes.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change to eliminate the requirement to close the recirculation suction valve of the idle recirculation loop during SLO only removes unnecessary conservatism which is not required to ensure proper LPCI injection into the vessel during a LOCA. The LPCI loop selection logic already ensures that the intact loop's recirculation pump discharge valves will close when selected for LPCI injection. Since all ECCS functions will continue to perform as designed, no new accident scenarios are created. Also, by requiring the idle loop to be electrically prohibited from starting, the possibility of a new event is not created.

Section 3.6.H.5.a-b and 4.6.H.5 provide for temperature monitoring prior to starting an idle pump, and monitoring to maintain acceptable primary system stress levels. Since the changes [do] not adversely affect the performance of any safety related systems, no new accident scenarios are created.

The change eliminating the requirements for actions when a region of instability is entered during SLO will not create a new or different type of accident because procedures are already in place that are consistent with NRC guidance in this area. These procedures are more conservative than the current Technical Specifications.

The removal of Section 3.6.H.4 (Dresden) and Section 2.1.A.4 (Quad Cities) does not create the possibility of a new or different kind of accident because the units will not be allowed to operate without forced circulation with these sections removed, and Section 3.6.H.4 added. The possibility of accidents occurring from operating in this mode has been eliminated, and no new types of accidents are created.

There is no possibility of a new type of accident being created from the removal of Section 3.6.H.3.a from the Dresden Technical Specifications. The analysis behind the reduced flow MCPR curves provides more thermal margin during SLO than two-loop operation, because the one-pump run-up transient is less severe than the two-pump run-up transient.

The speed requirement change (Section 3.6.H.3.d for Dresden) for the operating recirculation pump prior to idle loop startup is in a conservative direction, and no new types of accidents are created.

The increase in allowed time to initiate SLO requirements for Quad Cities (Section 2.1.A.4) does not represent a significant change, and still allows adequate time to implement necessary requirements. No new types of accidents are created by this change.

The proposed changes do not involve a significant reduction in a margin of safety because:

The change to eliminate the requirements to close the recirculation suction valves of the idle loop during SLO maintains the assumptions of the LOCA analyses. The LPCI loop selection logic will automatically close the recirculation pump discharge valve of the unbroken loop to ensure proper LPCI injection. Therefore, the current MAPLHGR limits at Dresden and Quad Cities will continue to ensure that Appendix K criteria are satisfied.

During normal dual loop operation, LPCI loop selection logic is relied upon to close the discharge valve of the unbroken loop following a LOCA. This function is performed during SLO, provided the discharge valve and the logic that automatically closes this valve upon the occurrence of a LOCA signal remain operable. Since the assumptions of the accident analysis are preserved by the proposed change, there is no reduction in any safety margin.

The safeguards in place preventing the inadvertent start of an idle recirculation pump are more than adequate protection against this transient. Three concurrent failures are required for this transient to occur. The transient would also be less severe due to the warmer water in the loop. Therefore, no reduction in a margin of safety will occur with this change.

The addition of Sections 3.6.H.5.a-b and 4.6.H.5 will not decrease margin to safety, since the temperature monitoring requirements will maintain acceptable stresses in the primary system during idle pump starts.

For Dresden, the current procedures for entrance into a region of stability provide more margin to safety than the current Technical Specifications require, because operation in a stability region is not allowed.

The elimination of Section 3.6.H.4 in the Dresden Technical Specifications and Section 2.1.A.4 in the Quad Cities Technical Specifications will not decrease a margin of safety because it prohibits operations in a potentially unstable region. This change is in a conservative direction.

The elimination of Section 3.6.H.3.a in the Dresden Technical Specifications does not cause a decrease in margin to safety, because there is more thermal margin to SLO than two-loop operation.

Changing the active loop speed requirement from 65% to 43% prior to idle loop startup for Dresden is in the conservative direction; therefore, margin to safety is increased.

The increase in allowed time to initiate SLO requirements for Quad Cities still provides adequate time to implement these requirements, and is not a significant change. Margin to safety is not decreased by this change.

Margin of safety does not, therefore, decrease due to the proposed Technical Specification amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: March 11, 1994

Description of amendment requests: The proposed amendments would provide surveillance requirements for new hydraulic snubbers, which will be installed on the Main Steam Lines (MSLs) during the current Unit 1 refueling outage. This outage began on March 13, 1994, and it is scheduled to end on July 3, 1994. These snubbers will also be installed on Unit 2 during the Unit 2 refuel outage (Q2R13) currently scheduled for the first quarter of 1995.

The amendment request would also change the Snubber Visual Inspection Intervals and Corrective Actions in Technical Specifications Sections 3.6.1 and 4.6.1 to the format and content of the BWR Standardized Technical Specifications (STS), as revised by the provisions of Generic Letter (GL) 84–13 "Technical Specification for Snubbers", dated May 3, 1984 and GL 90–09 "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions", dated December 11, 1990.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Commonwealth Edison Company has evaluated the proposed Technical Specification Amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of Quad Cities Station Units 1 and 2 (Quad Cities) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes adopt the format and content of the BWR-STS, as modified by the provisions of GL 84–13 and GL 90–09. As such, these proposed changes are administrative in nature and have no effect on the accident analyses or system operation.

The proposed schedule for snubber visual inspection intervals described in GL 90–09 will maintain the same level of confidence as the existing schedule as documented in Generic Letter 90–09, Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions, dated December 11, 1990. Also, the surveillance requirement and schedule for snubber functional testing remains the same providing a 95 percent confidence level that 90 to 100 percent of the snubbers operate within the specified limits. The proposed visual inspection schedule is separate from functional testing and adds to the confidence level that the installed snubbers will serve their design function and are being maintained operable. Accident analyses assume that snubbers are initially operable. Compliance with the Technical Specification Surveillance Requirements for functional testing in conjunction with the revised visual inspection schedule assures continued operability of the snubbers. Therefore, no initial assumptions are being changed and thus neither the probability nor consequences of any accidents previously evaluated are significantly increased.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed changes adopt the format and content of the BWR-STS, as modified by the provisions of GL 84–13 and GL 90–09. As such, these proposed changes are administrative in nature and have no effect on the accident analyses or system operation.

The proposed schedule for snubber visual inspection intervals will maintain the same level of confidence as the existing schedule as documented in Generic Letter 90–09, Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions, dated December 11, 1990. Also, the surveillance requirement and schedule for snubber function testing remains the same providing a 95 percent confidence level that 90 to 100 percent of the snubbers operate within the specified limits. The proposed visual inspection schedule is separate from functional testing and adds to the confidence

level that the installed snubbers will serve their design function and are being maintained operable. As a result, the supported piping, components, etc. will be maintained operable, so that supported safety systems will perform as designed. Therefore, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in the margin of safety because:

The proposed changes adopt the format and content of the BWR-STS, as modified by the provisions of GL 84–13 and G[L] 90–09. As such, these proposed changes are administrative in nature and have no effect on the accident analyses or system operation. In addition, the proposed amendment maintains the same level of confidence as the current technical specification that snubbers are operable through the current snubber functional testing and the revised snubber visual inspection schedule and the associated corrective action requirements. Therefore the proposed changes do not impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: February 25, 1994

Description of amendment request: The proposed amendment will add a new Technical Specification 3/4.7.12, "Ultimate Heat Sink."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The ultimate heat sink (Connecticut River) provides the cooling water necessary to ensure the removal of the normal heat loads and normal cooldown loads of the plant and to mitigate the effects of accidents at the plant within acceptable limits. By placing a technical specification limit on the maximum temperature of the ultimate heat sink for plant operation, CYAPCO will assure that sufficient heat removal capacity is available. The intake structure draws water from the ultimate heat sink for circulation by the service water system and circulating water system. By adding this new requirement to the technical specifications, CYAPCO will ensure that the design basis, as stated in the Final Safety Analysis Report, for the ultimate heat sink is not violated.

The change does not affect any initiating event. Thus, the change does not affect the probability of occurrence of any design basis accidents previously evaluated.

There are no adverse impacts on the design basis accidents due to the addition of the ultimate heat sink temperature limitation. This administrative change has no effect on the consequences of the previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Currently, the Haddam Neck Plant controls the ultimate heat sink temperature limit to less than 90°F for Mode 1, 2, 3, and 4 via a plant procedure. The proposed change institutes a technical specification in place of this administrative control.

As such, the administrative change is consistent with the current plant practice and has no effect on plant operation. Since there are no changes in the way the plant is operated, there is no possibility of an accident of a different type than previously evaluated due to the change.

3. Involve a reduction in a margin of safety.

The proposed change does not impact the physical protective boundaries, nor does it affect the performance of safety systems. There is no degradation in operability and surveillance requirements for the ultimate heat sink. Therefore, there will be no adverse impact on the margin of safety as defined in the basis for any technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 28, 1994

Description of amendment request: This amendment request is an additional followup to the amendment request of May 29, 1992, published in the **Federal Register** on July 8, 1992, (57 FR 30242) which changed the Technical Specifications Section 1.0, Definitions, to accommodate a 24-month fuel cycle and which proposed the extension of the test intervals for specific surveillance tests. This amendment proposes extending the surveillance intervals to 24 months for leak testing containment isolation valves. The changes requested by the licensee are in accordance with Generic Letter 91–04, "Changes in Technical Specification Intervals to Accommodate a 24–Month Fuel Cycle." In addition, the request corrects an administrative error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the interval between leakage tests of the containment isolation valves listed in the Technical Specifications be revised from 24 months to 24 months (+25%), consistent with an exemption request to 10 CFR [Part] 50 Appendix J for type C tests which requests an identical extension in the interval between tests.

The proposed changes do not involve a significant increase in the probability or consequences of a previously analyzed accident. These changes propose extending the surveillance intervals for containment leakage testing. The changes do not involve any physical changes to the plant or alter the way equipment functions. Other system testing (e.g., on-line tests) provides assurance of system operability. An evaluation of past equipment performance provides additional assurance that the longer surveillance intervals will not degrade system performance. The 25% increase in the surveillance interval for type C leak rate testing is compensated for by a proportionate increase in the margin between specified leakage limit and the allowable leakage limit. Valves that are sealed with fluid are exempted from the 10 CFR [Part] 50, Appendix J leakage requirements. The Technical Specifications establish separate acceptance criteria for such cases base[d] on system design considerations. Additionally, in most cases, containment isolation valve redundancy (two valves in series) provides additional assurance that actual leakage would be lower than the test results would indicate.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed license amendment does not create the possibility of a new or different kind of accident. These changes propose extending the surveillance intervals for containment leakage testing. The changes do not involve any physical changes to the plant or alter the way equipment functions. Other

system testing (e.g., on-line tests) provides assurance of system operability. An evaluation of past equipment performance provides additional assurance that the longer surveillance intervals will not degrade system performance. The 25% increase in the surveillance interval for type C leak rate testing is compensated for by a proportionate increase in the margin between specified leakage limit and the allowable leakage limit. Also, containment isolation valve redundancy (two valves in series) provides additional assurance, in most cases, that leakage would be lower than the test results would indicate.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

The proposed change[s] does[do] not involve a significant reduction in the margin of safety. These changes propose extending the surveillance intervals for containment leakage testing. Other system testing (e.g., on-line tests) provides assurance of system operability. An evaluation of past equipment performance provides additional assurance that the longer surveillance intervals will not degrade system performance. The 25% increase in the surveillance interval for type C leak rate testing is compensated for by a proportionate increase in the margin between specified leakage limit and the allowable leakage limit. Also, containment isolation valve redundancy (two valves in series), in most cases, provides additional assurance that leakage would be lower than the test results would indicate.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 11, 1993

Description of amendment request: The amendments would change the Technical Specification (TS) surveillance requirements for the emergency core cooling system (ECCS) subsystems. Specifically, the changes would revise the minimum developed head requirement for the centrifugal charging pumps (CCPs), the safety injection pumps (SIPs), and the residual heat removal pumps (RHRPs); revise the sum of the minimum injection flowrates for the CCPs, SIPs, and the RHRPs; and revise the total maximum pump flowrate (runout limit) for the CCPs and the SIPs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(Amendment would not) involve a significant increase in the probability or consequences of an accident previously evaluated.

The TS [technical specification] changes proposed by this amendment request are not considered to be initiators of any Design Basis Accidents (DBA). During normal operation the SIPs and the RHRPs are in standby, they are not operating. In the event of an accident resulting in an Engineered Safeguard (ES) actuation, the pumps would start to provide flow to the reactor vessel. The minor changes proposed for these pumps (SIPs and RHRPs) would not cause any accidents or events that have been previously evaluated.

During normal operation, a CCP is operating. The proposed minor changes provided by this submittal only impact the performance of these pumps in response to an ES actuation. The proposed changes do not affect, in any way, how these pumps are operated during normal operation. As such, the minor changes proposed for the CCPs would not cause any accidents or events that have been previously evaluated. Accordingly, the proposed TS changes would not increase the probability of an accident that has been previously evaluated.

The purpose of the ECCS subsystem is to ensure sufficient flow is provided to the core in the event of a LOCA [loss of coolant accident], that is to mitigate the consequences of a LOCA. A LOCA analysis was performed to determine the impact of the proposed TS changes. The analysis was performed in accordance with the NRC approved LOCA methodology for McGuire Nuclear Station. The results of the analysis demonstrate that the acceptance criteria of 10 CFR 50.46 are still satisfied. Further, the purpose of the proposed TS changes are to prevent runout of the ECCS subsystem pumps during the injection and recirculation phases of a LOCA. Accordingly, the proposed TS changes would not increase the consequences of an accident that has been previously evaluated.

(Amendment would not) create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

The proposed TS changes would not require any modifications to any structures, systems or components at McGuire Nuclear Station. Some minor changes to certain testing procedures for the ECCS subsystem pumps would be necessary. These minor changes would only involve specific values identified within the procedure and would not result in any changes on how the test would be performed. No other changes to procedures on how the station is operated or maintained would occur. Accordingly, the proposed TS change would not create a new or different kind of accident than what has been previously evaluated.

(Amendment would not) involve a significant reduction in a margin of safety.

The results of the analysis that was performed to determine the impact of the proposed TS changes would have in mitigating a LOCA indicate that the acceptance criteria of 10 CFR 50.46 are still satisfied. The analysis that was performed demonstrate that the Peak Clad Temperature (PCT) would remain below 2200°F. The proposed changes ensure that the ECCS subsystem pumps will be operated within the limits specified by the manufacturer. Accordingly, the proposed TS changes would not significantly reduce any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews, Director

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 25, 1994

Description of amendment request: The amendments would add four instruments to the Technical Specification (TS) Tables 3.3–10 and 4.3–7 as part of the accident monitoring instrumentation, and delete five instruments from the TS Tables that are not part of the accident monitoring instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

RESPONSE: No

This proposed change does not involve any significant increase in the probability or consequences of any accident previously evaluated because no changes in the types,

categories, hardwares and setpoints of the instruments involved were made; only the designation of which instruments should be listed in the T/S [technical specification] Tables and labeled as PAM [Post-Accident Monitoring] in the control room is changed through this proposed change.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

RESPONSE: No

This proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because no changes in the types, categories, hardwares and setpoints of the instruments involved were made; only the designation of which instruments should be listed in the T/S Tables and labeled as PAM in the control room is changed through this proposed change.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

RESPONSE: No

This proposed change does not involve a significant reduction in a margin of safety because no changes in the types, categories, hardwares and setpoints of the instruments involved were made; only the designation of which instruments should be listed in the T/S Tables and labeled as PAM in the control room is changed through this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews, Director

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 3, 1994

Description of amendment request: This amendment removes restrictions from the Arkansas Nuclear One, Unit No. 1 (ANO–1) technical specifications (TSs) that prohibit use of the auxiliary building crane to move spent fuel shipping casks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The ANO procedures, load paths, crane equipment certification, operator training and other related heavy load handling topics were evaluated as part of the control of heavy loads issue and found acceptable. Spent fuel cask handling is discussed in Section 9.6.2.6 of the ANO–1 SAR [safety analysis report], which shows that the cask will never travel over spent fuel. ANO–1 SAR Section 9.6.2.6 further evaluates the unlikely event of a cask drop accident and shows that the consequences are acceptable. Deletion of TS 3.8.15 to allow handling of a spent fuel shipping cask by the auxiliary building crane will have no actual impact on the cask drop or any other previously analyzed accident and therefore, does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed amendment will allow handling of a spent fuel shipping cask by the auxiliary building crane where [sic] previously prohibited pending NRC evaluation of the spent fuel cask drop accident and crane design. The cask handling methods and cask drop accident are discussed and evaluated in ANO–1 SAR Section 9.6.2.6. Additionally, the NRC performed an independent evaluation of the radiological consequences of a cask drop accident, as documented in the ANO–1 SER [safety evaluation report] dated June 6, 1973. The evaluation of the unlikely event of a cask drop accident included assessment of equipment failures and has shown the consequences to be within acceptable bounds. Since no new accident scenarios can be identified related to the proposed amendment request, this change is bounded by the analysis described in the SAR and does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

Although allowing use of the Auxiliary Building crane where [sic] previously prohibited by the TS could increase the possibility of a cask drop accident, the margin of safety is preserved in that the acceptable consequences of the cask drop accident evaluation in SAR Section 9.6.2.6 are not affected by this change. The proposed amendment request will not adversely affect the adequacy and conservatism of the cask drip accident evaluation. Therefore, the cask handling issue at ANO–1 continues to exhibit an acceptable margin of safety and does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502

NRC Project Director: William D. Beckner

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: February 22, 1994

Description of amendment request: The proposed amendments will relocate the instrument response time limits for the Reactor Protective System and Engineered Safety Features Actuation System from the Technical Specifications (TS) to the Updated Safety Analysis Report for both units. The proposed changes are line-item TS improvements and conform to the guidance given in Enclosures 1 and 2 of NRC Generic Letter 93–08.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments for St. Lucie Units 1 and 2 simply relocate tables of response time limits for instrumentation of the Reactor Protective System (RPS) and Engineered Safety Features Actuation System (ESFAS) from the Technical Specifications (TS) to the Updated Safety Analysis Report (UFSAR). The proposed amendments conform to the guidance given in Enclosures 1 and 2 of USNRC Generic Letter 93–08 (GL 93–08). Neither the response time limits nor the surveillance requirements for performing response time testing will be altered by this submittal. The overall RPS and ESFAS

system functional capabilities will not be changed and assurance that actions of the protective and engineered safety features systems are completed within the time limits assumed in the accident analyses is unaffected by the proposed TS changes. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of plant operation defined in the Facility License. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The measurement of instrumentation response times at the frequencies specified in the TS provides assurance that actions associated with the protective and engineered safety features systems are accomplished within the time limits assumed in the St. Lucie Units 1 and 2 accident analyses. The response time limits, and the measurement frequencies remain unchanged by the proposed amendments. The proposed changes do not alter the basis for any other Technical Specification that is related to the establishment of or maintenance of a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: February 28, 1994.

Description of amendment request: The proposed amendments will delete the minimum frequency criteria prescribed for quality assurance audits from Administrative Controls sections 6.5.2.8 and 6.8.4 of the Technical Specifications (TS). Audit periodicity will thereby be controlled by the program described in the Florida Power and Light Company (FPL) Topical Quality Assurance Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment relocates administrative control criteria for minimum audit frequencies from the facility Technical Specifications to the FPL Quality Assurance (QA) Program. The QA Program is described in the FPL Topical Quality Assurance Report pursuant to 10CFR50, Appendix B. The change does not alter the bases upon which assurance is provided that safety-related activities are performed correctly nor does it involve the conditions and assumptions utilized in the analyses of plant transients and accidents. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of plant operation defined in the Facility License. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not alter the bases for assurance that safety-related activities are performed correctly or that compliance with the required Limiting Conditions for Operation will be achieved. The change does not alter the basis for any Technical Specification that is related to the establishment of or maintenance of a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 1, 1994.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.2.4, "Quadrant Power Tilt Ratio," to add an exception to the requirements of TS 3.0.4. Specifically, to add ACTION statement "d. The provisions of Specification 3.0.4 are not applicable."

Basis for proposed no significant hazards consideration determination: In 1992, the Vogtle TSs were amended in accordance with the recommendations of Generic Letter 87–09 to revise the wording of TS 3.0.4 and to delete from TS 3.2.4 the statement that the provisions of TS 3.0.4 are not applicable. With the revised wording of TS 3.0.4, the statement of the non-applicability of the provisions of TS 3.0.4 was redundant for many individual specifications, and its deletion caused no change in ACTION requirements. However, in the case of TS 3.2.4, the deletion had the unintended effect of prohibiting power escalation above 50% rated thermal power (RTP) whenever the quadrant power tilt ratio (QPTR) exceeds 1.0.2. This unnecessarily delays power escalation. The proposed amendment would correct this error and restore the originally intended meaning of TS 3.2.4. The intent of TS 3.2.4 is to permit the escalation of reactor power above 50% RTP for limited times and under specified conditions when the QPTR is greater than 1.02.

With the original requirements of TS 3.2.4 restored, plant operation and power escalation during startup would be the same as previously approved. Therefore, the proposed change (1) does not involve a significant increase in the probability or consequences or an accident previously evaluated, (2) does not create the possibility of a new or different kind of accident than previously evaluated, and (3) does not involve a significant reduction in the margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated because it does not allow operation in a condition that is not already allowed by the Technical Specifications.

2. The proposed change to the Technical Specifications does not create the possibility of a new or different kind of accident from any accident previously evaluated because it will not allow operation under conditions different from those already allowed by the technical specifications.

3. The proposed addition to the Technical Specifications does not involve a significant reduction in the margin of safety because the action requirements will continue to be met in the same manner as currently required by the Technical Specifications.

Accordingly, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308.

NRC Project Director: David B. Matthews, Director.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: February 7, 1994.

Description of amendment request: The purpose of the request is to require the TMI–1 annual radioactive effluent release report for the previous calendar year be required to be submitted prior to May 1 of each year. Changing the TMI–1 due date to prior to May 1 can enable the licensee to combine the reports for TMI–1 and TMI–2 into a single report with a common due date.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Submission of the annual radioactive effluent release report on or before April 30 each year in accordance with the change, as compared to the current requirement of March 1, does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The date on which the report is due has no impact on plant operations or effluents. It does not change the control of plant activities or the monitoring of plant effluents.

2. Operation of TMI–1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment has no impact on plant operations, plant effluents or the control of plant operations or effluents. Therefore, there is no potential to create a new or different kind of accident.

3. Operation of TMI–1 in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. There is no specified margin of safety in regards to the due date for the annual radioactive effluent release report.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: March 2, 1994.

Description of amendment request: The purposes of the request are to change the plant Technical Specifications (TS) to modify Operational Safety Instrumentation requirements to specify completion times which allows for performance of maintenance or surveillance within a reasonable time and to be consistent with the allowable outage time for other safety-related equipment when only one train is affected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequence of an accident previously evaluated.

The proposed amendment permits time to restore instrumentation channels to operable status which is consistent with existing times allowed for outage of other safety-related equipment affecting one train. With regard to the 1 hour timeclock, this time is sufficient to perform the required action necessary to restore minimum required conditions. Allowing 6 hours to reduce reactor power in an orderly manner without challenging plant systems is reasonable, based on operating experience. Thus, the proposed amendment maintains an adequate degree of equipment availability without requiring unnecessary initiation of a plant shutdown for partial equipment outages.

Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment affects the [Reactor Protection System] RPS and the [Engineered Safeguards Actuation System] ESAS by providing timeclocks to perform corrective actions. During this timeclock period the safety function of the RPS can still be completed by the remaining minimum required channels. If an accident occurred while one ESAS train was inoperable due to faulty pressure switches or a faulty manual actuation channel, the redundant train would complete the safety function. The proposed time allowed for the pressure switches in one train or the faulty manual actuation channel to be out of service is bounded by the allowable time for other safety-related equipment such that only one train is affected. The proposed 8 hour timeclock associated with the [Reactor Building] RB purge radiation monitor, RMA–9, provides adequate time to confirm a problem exists and perform minor troubleshooting. The containment isolation function for the RB purge valves would still be maintained by a redundant 4 psig ESAS signal and a redundant reactor trip containment isolation signal.

Therefore, the proposed amendment does not create the possibility of a new or different accident.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

As noted in the Bases for Specification 3.5.1, every reasonable effort will be made to maintain all safety instrumentation in operation. If RPS or ESAS instrumentation is found to be inoperable or require maintenance to assure reliability, the proposed amendment will allow the performance of maintenance and surveillance in a reasonable time period. The change does not result in a significant reduction in a margin of safety for the RPS because the automatic functions and various alternative manual trip methods are still available. Also, this change does not result in a significant reduction in a margin of safety for the ESAS because at least one train of safety features is required for continued operation within the specified timeclocks with automatic and manual trip functions.

Thus, operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: March 11, 1994.

Description of amendment request: The purposes of the request are to (1) change the plant Technical Specifications (TS) to specify an allowable outage time for the Emergency Feedwater (EFW) Pumps during surveillance activities and (2) change the requirement to test redundant components for operability to a requirement to ensure operability based on verification of completion of appropriate surveillance activities. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The proposed amendment specifies an allowable outage time for testing of the EFW pumps. Also, this proposed change reflects the current NRC staff position regarding the need for additional testing to assure OPERABILITY. The allowable outage time this change provides for EFW pump testing is acceptable because the operator action required to make the motor driven EFW pump OPERABLE is minimal and can be performed in a very short time by the Control Room Operator who is continuously present during the time by the motor-driven EFW pump is in the Pull-To-Lock position.

The changes affecting OPERABILITY determinations of redundant train/components for reactor building isolation valves and the control room air treatment systems reflect the current NRC staff position. Verifying that the required periodic surveillance testing is current and there are no known reasons to suggest the redundant train/component is inoperable, provides adequate assurance of system OPERABILITY.

Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment specifies an allowable outage time and deletes unnecessary redundant equipment testing. These changes do not change system operational requirements or response to system transients. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment specifies an allowable outage time and replaces redundant equipment testing with verification that surveillance is current as an adequate means to ensure OPERABILITY. These changes do not involve any activities associated with the margin of safety envelope. Thus, operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 16, 1994.

Description of amendment request: The licensee proposes to amend the South Texas Project technical specifications (TS) by modifying TS 3.4.9.3, "Reactor Coolant System—Overpressure Protection Systems," Figure 3.4–4, "Nominal Maximum Allowable PORV Setpoint for the Cold Overpressure System," for the cold overpressure mitigation system (COMS) with a revised setpoint curve. The proposed amendment would account for the pressure losses of the reactor coolant flow through the reactor core with either two or four reactor coolant pumps (RCP) operating. It was determined that the original COMS setpoint curve neglected reactor coolant pressure losses due to flow through the reactor core with the

RCPs operating. The resulting pressure at the reactor vessel downcomer at the elevation equivalent to the core mid-plane was higher than the pressure at the sensing point located in the residual heat removal system suction line connected to the reactor coolant system (RCS) hot leg. The proposed amendment would lower the power operated relief valve (PORV) setpoint limit by a quantity equal to the pressure difference between the pressure at the reactor vessel downcomer at the elevation of the core mid-plane and the pressure at the location of the residual heat removal system pressure transmitters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

The presently existing pressurizer Power Operated Relief Valves (PORVs) setpoints, provided by the Cold Overpressure Mitigation System Curve (Figure 3.4–4) of Technical Specification 3.4.9.3, are nonconservative in that they do not account for reactor coolant pressure losses due to flow through the reactor core with Reactor Coolant Pump (RCPs) in operation. When RCP operation is considered, the pressure at the reactor vessel downcomer, at an elevation equivalent to core midplane, is higher than the pressure sensing point located in the Residual Heat Removal System suction line connection to the Reactor Coolant System (RCS) hot leg. Houston Lighting & Power Company became aware of this condition and re-analyzed the Cold Overpressurization Event for the South Texas Project. The re-analysis has resulted in modifications to Figure 3.4–4 of Technical Specification 3.4.9.3. The re-analysis reduced the PORVs setpoint to account for the pressure losses and provides for a setpoint for two Reactor Coolant Pump operation and for four Reactor Coolant Pump operation.

The proposed decrease in the PORVs setpoint reduces the pressure versus temperature limit for the RCS under start-up and shut-down operations. The decreased PORV setpoints for post-overpressure incidents will ensure that RCS pressure will be maintained within acceptable limits during low temperature water solid operation for both two and four pump operation.

The proposed change is based on a re-analysis which accounts for reactor coolant pressure losses through the reactor core. Reflecting actual reactor coolant pressure losses and adjusting the PORV setpoint as necessary has no adverse effect on the probability or consequences of an accident previously evaluated. Therefore, the proposed changes not only do not involve a significant increase in the probability or consequences of an accident previously evaluated, but actually maintain the original design basis.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed decrease in the PORV setpoints ensures that staggered operation of the two PORVs are maintained, thus minimizing the potential for large pressure undershoots resulting from multiple valve operation which may compromise the Reactor Coolant Pump No. 1 Seal integrity. It also restricts the total number of discharge ports at any given moment to that absolutely necessary for pressure control. In addition, operation of either PORV provides the required design basis relief capacity and the required redundancy necessary to meet single failure criteria.

The proposed change is the result of a re-analysis of a previously evaluated accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in the margin of safety.

The proposed change corrects an error present in the original analysis by accounting for reactor coolant pressure losses through the reactor core. The revised COMS curves are the result of a re-analysis of the original COMS analysis. The new analysis preserves the originally intended margin of safety. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document location: Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036.

NRC Project Director: Suzanne C. Black.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: March 21, 1994.

Description of amendment request: The licensee proposes to revise Technical Specifications 3.1.2.3 "Reactivity Control Systems Charging Pumps—Shutdown" and 3.1.2.1 "Boration Systems Flow Paths—Shutdown." The amendment would allow energizing of an inoperable centrifugal charging pump in preparation for switching of the centrifugal charging pumps, provided the pump discharge is isolated from the reactor coolant system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed change is to modify the note which permits energizing of an inoperable centrifugal charging pump for testing purposes, provided the pump discharge is isolated from the reactor coolant system, to include pump energization for switching purposes.

The proposed changes can potentially impact two events during Modes 4, 5, and 6: (1) Cold overpressurization of the reactor coolant system, and (2) boron dilution resulting in a return to criticality. The requirements of Specification 3.1.2.3 with regard to the cold overpressure mitigation system analysis would remain valid because the inoperable centrifugal charging pump would be isolated from the reactor coolant system. A return to criticality would be prevented because the action statement of Specification 3.1.2.1 would be entered if the boron injection flow path could not be restored following centrifugal charging pump switching. Therefore, allowing energization of an inoperable pump for switching would have an insignificant effect on the probability of an overpressurization and boron dilution accident.

Energization of an inoperable pump is currently permitted for testing purposes provided the pump discharge is isolated from the reactor coolant system. It is operationally desirable to maintain flow to the reactor coolant pump seals during the centrifugal charging pump switching process. This proposed change will not only protect the reactor coolant system from overpressurization at low temperatures, but will also provide the capability of maintaining reactor coolant pump seal injection flow during the switching process.

Therefore, there is no increase in the probability or consequences of a previously evaluated accident.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Required boron injection flow paths would be maintained in Modes 4, 5, and 6 except during centrifugal charging pump switching. In the event the boron injection flow path could not be restored after centrifugal charging pump switching, the action statement of Specification 3.1.2.1 would be entered. The proposed changes would not affect the operability of safety-related equipment and reactor coolant pump seal injection flow could be maintained. The plant operators are knowledgeable of the potential situation being created by energizing two centrifugal charging pumps and will follow direct administrative controls to isolate the pumps from the reactor coolant system. Therefore, the possibility of a new or different kind of accident is not created.

(3) The proposed change does not involve a significant reduction in the margin of safety.

Cold overpressure mitigating system requirements in Specification 3.1.2.3 would continue to be maintained as a result of the proposed change. Thus, 10 CFR 50 Appendix G limits will not be affected. Although the boron injection flow path required by Specification 3.1.2.1 may briefly be compromised, there is no significant reduction in a margin of safety because core alterations would be halted and positive reactivity changes would not be made if the boron injection path could not be maintained after centrifugal charging pump switching. This action, coupled with the short time period required for centrifugal charging pump switching, would preclude a return to criticality event. Therefore, there is no significant reduction in a margin of safety.

Based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room Location: Wharton County Junior College, J.M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036.

NRC Project Director: Suzanne C. Black.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: February 16, 1994 (Reference LAR 94–05).

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 3/4.7.2.1, "Steam Generator Pressure/Temperature Limitation," 3/4.7.7.1, "Snubbers," 3/4.7.8.1, "Sealed Source Contamination," 3/4.7.11, "Area Temperature Monitoring," and 3/4.7.13, "Flood Protection," in accordance with the Commission's Final Policy Statement on TS Improvements for Nuclear Power Reactors. These TS would be relocated to plant administrative controls and the final safety analysis report by reference.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Do the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

These proposed changes simplify the TS, meet regulatory requirements for relocated TS, and implement the recommendations of the Commission's Final Policy Statement on TS Improvements. Future changes to these requirements will be controlled by 10 CFR 50.59. The proposed changes are administrative in nature and do not involve any modifications to any plant equipment or affect plant operation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Do the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature, do not involve any physical alterations to any plant equipment, and cause no change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Do the changes involve a significant reduction in a margin of safety?

The proposed changes do not alter the basic regulatory requirements and do not affect any safety analyses. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: Theodore R. Quay.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: February 16, 1994 (Reference LAR 94–04).

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 4.2.2, "Heat Flux Hot Channel Factor—$F_Q(z)$," and 6.9.1.8, "Core Operating Limits Report," to implement the revised methodology for calculating the penalty to $F_Q(z)$. The specific TS changes proposed are as follows:

(1) The 2 percent $F_Q(z)$ penalty listed in TS 4.2.2.2.e.1) would be deleted and the statement revised to indicate the use of an appropriate factor to be specified in the Core Operating Limits Report (COLR).

(2) TS 6.9.1.8.b.1. would be changed to reference Revision 1 of WCAP 10216–P–A, "Relaxation of Constant Axial Offset Control $F_Q(z)$ Surveillance Technical Specification," dated February 1994.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The Heat Flux Hot Channel Factor, $F_Q(z)$, is not involved in the initiation of any accident. Verifying $F_Q(z)$ is below its limit ensures initial conditions for accident analyses are met. The proposed changes have been previously approved by the NRC and provide for application of a more conservative $F_Q(z)$ penalty which will ensure that possible $F_Q(z)$ margin decreases are adequately accounted for. Therefore, if the $F_Q(z)$ does exceed its limit, the appropriate actions in TS 3.2.1 and TS 3.2.2. will be taken and are adequate to ensure design basis accidents analyses assumptions are met.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

$F_Q(z)$ is not involved in the initiation of any accident. The $F_Q(z)$ surveillance provides assurance that the initial conditions for accident assumptions are met. $F_Q(z)$ is a measurement of a physical property and is not involved in the initiation of any accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The $F_Q(z)$ surveillance ensures that certain core parameters are maintained consistent with supporting assumptions regarding the core for postulated accidents. The methodology used in Revision 1 to WCAP–10216–P–A adequately accounts for $F_Q(z)$ increases between monthly flux maps. Using the methodology of Revision 1 to WCAP–10216–P–A results in a $F_Q(z)$ penalty which is more conservative than the current TS $F_Q(z)$ penalty of 2 percent. If the $F_Q(z)$ increases above the TS limit, appropriate actions in TS 3.2.1 and TS 3.2.2. are adequate to ensure design basis accidents analyses assumptions are met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 27, 1993, revised March 8, 1994.

Description of amendment request: The proposed amendment, as revised, by Portland General Electric Company, PGE or the licensee, would change the Trojan Nuclear Plant (Trojan) Appendix A Technical Specifications to reflect the permanently defueled status of the facility. The permanent cessation of power generation at Trojan and the May 5, 1993 amendment to the license which granted the licensee a Possession Only License for the facility has rendered many of the existing provisions of the current Appendix A Technical Specifications inappropriate. PGE has developed Permanently Defueled Technical Specifications (PDTS) for Trojan using NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," as a basis for the PDTS scope and format.

Based on a series of discussions between the PGE staff and the NRC on February 9, 1994 and February 28, 1994 the licensee has revised several requirements contained in the original June 27, 1993 amendment request. These revisions were forwarded to the NRC staff by letter dated March 8, 1994. The March 8, 1994 revision updates the June 27, 1993 submittal deleting reference to sections that had been relocated out of the Technical Specifications by amendments granted since June 1993. It also provided supplemental information concerning the deletion and/or relocation of certain existing Trojan Technical Specifications requested by the NRC staff. The March 8, 1994 submittal also clarified the long term organization at the site, established a line of succession for the operational command and control function, modified the review and audit functions performed by the Independent Review and Audit Committee assuring their independence of review, required independent review of certain programs and manuals, limited annual and quarterly doses and operability and usage of the effluent treatment systems to conform to Appendix I to 10 CFR Part 50, continued the existing requirement for surveillance of former structural modifications to the facility, and required the submission of an annual radioactive effluent release report in accordance with 10 CFR 50.36a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided an analysis of the issue of no significant hazards consideration. In accordance with the requirements of 10 CFR 50.92, Issuance of Amendment, this license amendment request, as revised, is judged to involve no significant hazards consideration based upon the following:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The licensee analysis shows that the worst case design basis accident for this plant, in its permanently shutdown defueled state, is a fire in the radioactive waste annex building. The licensee has also identified a second design basis accident scenario, a fuel handling accident in the vicinity of the Trojan spent fuel pool. Other Trojan Final Safety Analysis Report (FSAR) accident scenarios addressed in Chapter 15 are no longer applicable to Trojan in the permanently defueled mode. The proposed amendment, as revised, does not lessen any of the requirements associated with either the radioactive waste annex building or the spent fuel pool therefore the probability of either accident occurring is unchanged. The proposed amendment, as revised, does not change the consequences of the accident since it does not affect the magnitude, detection, or mitigation of either accident scenario. Additionally, the ability of the radioactive waste annex building and the spent fuel pool to withstand other applicable FSAR events, natural phenomena, and fires is either unchanged from the existing licensing basis or is improved during the permanently defueled condition.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Maintaining the permanently defueled facility in accordance with the PDTS, as revised by the March 8, 1994 letter, does not create the possibility of a new or different kind of accident from any previously considered. Most of the existing plant systems and functions will not be operational in the permanently defueled condition since power operations are prohibited and all of the fuel at Trojan is stored in the spent fuel pool. However, all structures, systems and components that are necessary for safe fuel handling and storage activities will be maintained operable during the permanently defueled condition. The proposed PDTS, as revised, provide operation and surveillance requirements and administrative controls which are sufficient to ensure that the required structures, systems and components will be maintained operable in the permanently defueled condition.

3. Operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The proposed PDTS, as revised by the March 8, 1994 letter, are sufficient to ensure no reduction in a margin of safety, in part, because of the reduced range of design basis accidents against which the facility must be protected now that the facility is prohibited from power operations and is permanently defueled. Only a fire in the radioactive waste storage facility or a fuel handling accident are relevant during the permanently defueled condition. The margins of safety for both of these accidents will remain the same or improve by maintaining the facility in accordance with the proposed PDTS, as revised. None of the other Chapter 15 FSAR accidents are applicable since power operations are prohibited and the facility is permanently defueled. Additionally, the margins of safety for other applicable FSAR events, natural phenomena, and fires are either unchanged from the existing licensing basis or is improved during the permanently defueled condition.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three

standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request, as revised by the March 8, 1994 supplement, involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: Seymour H. Weiss

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: October 14, 1993

Description of amendments request: The proposed changes would revise surveillance test intervals and allowed outage times for reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation. The proposed changes would also revise certain RTS/ESFAS functions, minimum channels operable, channel calibration, and channel functional test requirements to ensure they are in concert with the Westinghouse Standard Technical Specifications and WCAP–10271, "Evaluation of Surveillance Frequencies and Out-of-Service Times for Reactor Protection Instrumentation Systems."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes to the RTS/ESFAS STIs [surveillance test intervals] and AOTs [allowed outage times], and Minimum Channels Operable, Channel Calibration and Channel Functional Test requirements will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The determination that the result of the proposed changes associated with STI and AOT are within all acceptable criteria [that] has been established in the SERs [Safety Evaluations] prepared for WCAP–10271; WCAP–10271 Supplement 1; WCAP–10271 Supplement 2; and WCAP–10271 Supplement 2, Revision 1. Implementation of the proposed changes results in a slight increase in the Reactor Trip System yearly unavailability. This slight increase, which is primarily due to less frequent surveillance, results in a slight increase in Core Damage Frequency (CDF) and public health risk. The values determined by the WOG and presented in the WCAP for the increase in CDR were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable. Increasing STIs and AOTs is not expected to affect the probability or consequences of previously evaluated accidents.

The change associated with the Minimum Channel Operable requirement for the RTS Turbine Trip by Turbine Throttle Valve Closure provides additional operating flexibility based on the Westinghouse Standard Technical Specifications, Revision 5. The new action statement ensures that any inoperable channel is placed in trip, and the remaining operable channels fulfill the necessary reactor trip diversity function. The change associated with the ESFAS Minimum Channel Operable requirement for Containment Pressure—High-High assures that the Technical Specifications reflect the correct as-built design actuation logic while ensuring the function continues to meet the single failure criteria. The proposed change to the turbine trip reactor trip function Channel Calibration reflects the assumptions in WCAP–10271 and current Farley calibration practices. The proposed change to the safety injection ESF [engineered safety feature] input for the reactor trip Channel Functional Test is consistent with the assumptions in WCAP–10271 and current Farley surveillance testing practices. The proposed changes to the ESF permissive interlocks Channel Calibration and Channel Functional Test requirements are in concert with the NRC SER for WCAP–10271 and Farley surveillance practices. The proposed change to the ESF manual initiation functions Channel Functional Test reflects the proper surveillance requirements for a Westinghouse Solid State Protection System (SSPS). The proposed changes to these RTS/ESFAS Channel Calibration and Channel Functional Test requirements are also consistent with Westinghouse Standard Technical Specifications.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes to not involve hardware changes and do not result in a change in the manner in which the RTS/ESFAS provides plant protection or the manner in which surveillance testing is perform to demonstrate operability. Therefore, a new or different kind of accident will not occur as a result of these changes.

(3) The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Evaluations have been performed to assure that the plant setpoints properly account for these instrument uncertainties over the longer time interval. RTS diversity is still provided by the Turbine Throttle Valve closure logic circuits. Steam Line Isolation diversity continues to be provided by the ESFAS Containment Pressure—High-High. Changes to certain RTS/ESFAS Channel Calibration and Channel Functional Test surveillances clarify what tests are required and when the tests are performed. Implementation of the proposed changes is expected to result in an overall improvement in safety as noted below.

a. Less frequent testing will potentially result in fewer inadvertent reactor trips and ESF component actuation.

b. Longer allowed outage times provide for better assessments of problems and easier repairs, ultimately resulting in better equipment performance.

c. Less frequent distraction of the plant operator and shift supervisor to attend to and support instrumentation testing will improve the effectiveness of the operating staff in monitoring and controlling plant operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 29, 1992, as supplemented on February 22, 1994

Description of amendment request: The proposed amendment would modify the following Technical Specifications and their associated bases to permit longer allowable outage times (AOT) and increase surveillance testing intervals from monthly to quarterly: 3/4.3.1 "Reactor Protection System Instrumentation;" 3/4.3.2 "Isolation Actuation Instrumentation;" 3/4.3.3 "Emergency Core Cooling System Actuation Instrumentation;" 3/4.3.4. "Recirculation Pump Trip Actuation Instrumentation ATWS Recirculation Pump Trip System Instrumentation;" 3/4.3.5 "Reactor Core Isolation Cooling System Actuation Instrumentation;" 3/4.3.6 "Control Rod Block Instrumentation;" 3/4.3.9 "Plant

Systems Actuation Instrumentation;" and 3/4.4.2 "Safety Valves."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes do not involve a change to the plant design or operation. The changes simply involve the frequency at which testing of the instrumentation is performed and the AOT for instruments. There may be a small increase in average instrument failure frequency as a result of increasing the surveillance interval. However, the proposed changes will require that a check be made for the majority of instruments to assure that making them inoperable for surveillance testing or repair does not result in a loss of function. This added check assures that a loss of function has not occurred, or if it has, that the appropriate ACTION statement be entered promptly. Therefore, these proposed changes do not result in a significant increase in either the probability or consequences of any accident previously analyzed.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not result in any change in the plant design or operation. The changes are for increased AOT and decreased frequency of instrumentation testing. The instrumentation involved are those instruments which sense plant problems and/or accidents, and then initiate systems or alarms to respond to the plant problem/accident. The proposed changes do not modify any of the instruments, or the initiation logic formed by the instruments. Therefore, no new or different type of an accident has been created.

The proposed changes do not involve a significant reduction in a margin of safety because the small increase in average instrument failure frequency is offset by safety benefits such as a reduction in the number of inadvertent test-induced scrams, a reduction in wear due to excessive equipment test cycling, and better optimization of plant personnel resources. In addition, the proposed changes will require that a check be made for the majority of instruments to assure that making them inoperable for surveillance testing or repair does not result in a loss of function. This added check assures that a loss of function has not occurred, or if it has, that the appropriate ACTION statement be entered promptly. Therefore, these proposed changes do not result in a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, D.C. 20037.

NRC Project Director: John N. Hannon.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 15, 1993

Brief description of amendments: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 technical specifications to increase the maximum permitted power at which the post-refueling power ascension reactor coolant system (RCS) flow verification can be performed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed change increases the power at which the verification of the Reactor Coolant System flow rate with a precision heat balance can be performed. The only potentially relevant concern for this change is the possibility of having insufficient flow to support the accident analyses at the higher (85%) power level. Power level and RCS flow are important parameters in determining the severity of an event but have no impact on the initiation of an event or accident. Thus, the change does not involve a significant increase in the probability of any previously analyzed accident.

Although accidents tend to be more severe at higher initial power levels, the acceptance criteria of the applicable safety analyses continue to be met [even when the test is conducted at the higher power level]. Thus, the proposed change would not involve an increase in the consequences of any previously analyzed accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change merely increases the power at which the initial post-refueling startup verification of RCS flow with a precision heat balance may be performed. Since the new power level is within the normal operating range of the reactor, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed change increases the power which can be attained prior to verification of the Reactor Coolant System flow with a precision heat balance. The power value is increased from 75% RTP [rated thermal power] to 85% RTP. An analysis was performed which demonstrates that the safety analysis DNB [departure from nucleate boiling] limit will not be exceeded if the initial power is 85% or less, even with a significant reduction in flow. A flow reduction significantly different from the expected flow is highly unlikely, however, since RCS flow is verified by measurement of elbow tap differential pressure prior to operation in Mode 1. This flow measurement, although less accurate than the precision heat balance, is sufficient to assure adequate flow at 85% power. Adequate limitations on power level, F delta-H verification, and the power range neutron flux-high setpoint are imposed during post-refueling power ascension to ensure that if the RCS flow is not verified with a precision heat balance until 85% RTP, the results of the accident analyses would remain valid.

The evaluation of the DNB-limited events, initiated from a power level of 85% RTP, considered the limitations imposed during the power ascension. Based on this evaluation, it is concluded that, even though 85% RTP is a more severe initial condition, the applicable event acceptance criteria would continue to be met; therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: Suzanne C. Black

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 30, 1994

Brief description of amendments: The proposed amendments would revise the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 Technical Specifications to allow the use of an alternative method for verifying that the emergency diesel generator fuel oil meets requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

Either the current testing option, which remains valid for fuel oil with ASTM Color 5 or less, or the alternative testing method, provide the necessary assurance that the water and sediment quantity in the new fuel oil is acceptable. As the performance of the quantitative water and sediment test of ASTM-D1796–1968, maintains essentially the same attribute qualities of the new fuel oil, there should not be any undetected degradation in the Diesel Generator fuel oil supply.

Therefore, since the fuel oil supply will be maintained at its present quality level, there should be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated in (1) above, the proposed amendment only provides a quantitative method for the acceptability determination of new Diesel Generator fuel oil. The proposed testing will continue to verify the high quality and acceptability of the fuel oil supply. There should not be any possibility that a new or different kind of accident from those previously evaluated is created.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The only margin associated with this amendment is the margin between the acceptance limit on water and sediment in the fuel oil supply and the quantity of water and sediment that could impact Diesel Generator operation. The "clear and bright" testing per ASTM-D4176–1982 and the proposed quantitative testing per ASTM-D1796–1968 are both written to detect and reject fuel oil containing water or sediment at essentially the same level. The margin of safety to Diesel Generator impairment is therefore not reduced. This amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, DC 20036.

NRC Project Director: Suzanne C. Black.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: February 21, 1992

Description of amendment request: The proposed amendment would revise Technical Specifications Appendix B, Environmental Protection Plan (Non-radiological), by removing Sections 2.3 and 4.3, "Cultural Resources." Union Electric has developed and maintains a management plan for the protection of cultural resources on the Callaway Plant site. The amendment request summarizes the plan that provides the status and disposition of each portion of the current Appendix B sections related to cultural resources.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change[s] do[es] not involve a significant hazards consideration because operation of Callaway Plant in accordance with these change[s] would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)).

The proposed changes are administrative in nature and have no impact on safety-related structures, systems or components. Therefore, there is no impact on the probability of occurrence or the consequences of an accident or malfunction of equipment previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated (10 CFR 50.92(c)(2)).

The proposed change[s] do[es] not affect any of the assumptions used in previous accident evaluations. All accidents continue to be bounded by previous analyses and deletion of satisfied Environmental Protection Plan requirements is administrative and will therefore not introduce the possibility of any new or different kind of accident.

3. Involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)).

The proposed changes are administrative and do not affect the margin of safety as defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: July 16, 1993

Description of amendment request: The amendment would revise Technical Specifications 3/4.8.1.1 and 3/4.8.1.2, A. C. Sources, Operating and Shutdown. The proposed revision changes the minimum required storage volume of the Emergency Fuel Oil storage and day tanks from 85,300 gallons and 390 gallons to 80,400 gallons and 510 gallons. These changes are the result of inconsistencies found by Union Electric, in the calculations and T/S Bases for tank capacities, while performing a self-initiated Electrical Distribution System Functional Assessment (EDSFA). The Electrical Distribution System Functional Inspection (EDSFI) performed by the NRC re-examined this issue and it was determined that NUREG–1431 provided bases for the change to day tank level. This submittal is a T/S enhancement. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to Technical Specifications 3/4.8.1.1 and 3/4.8.1.2 do not involve a significant hazards consideration because operation of Callaway Plant with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The current minimum required volume of the day tanks as given in T/S 3.8.1.1b.1 and 3.8.1.2b.1 is based on fuel oil with a specific gravity value in the upper range of values allowed by T/S. Calculations made using fuel oil with a specific gravity of 39 degrees API, which is the minimum allowed specific gravity, indicate a larger minimum required volume is needed in the day tanks. The increased minimum required volume provides additional conservatism for the day tanks to perform their intended safety function based on the possibility of using different specific gravity fuel oil. The current minimum required volume of the storage tanks as given in T/S 3.8.1.1b.2 and 3.8.1.2b.2 was calculated by using an overly conservative Net Positive Suction Head (NPSH) available calculation. The original calculation assumed a static head was needed in order for the NPSH available to exceed the NPSH required and assure proper operation of the fuel oil transfer pumps. Union Electric calculations have determined that the NPSH required for the transfer pumps is maintained as long as the pump suction is submerged. Based on this calculation the minimum required volume of the storage tanks can be reduced and the diesel generators can still achieve their required seven days of operation at continuous rating plus an additional volume available to be used for testing.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

There is no new type of accident or malfunction being created and the method and manner of plant operation remains unchanged. The safety design bases in the FSAR have not been altered, the requirement for continuous operation remains unchanged.

(3) Involve a significant reduction in a margin of safety.

There are no plant design changes involved and no changes are being made to the safety limits or safety system settings that would adversely impact plant safety. The minimum required storage volumes of the day and storage tanks are being changed based on calculations using conservative data.

Based on the above discussions, it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: February 25, 1994

Description of amendment request: The proposed change would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA–1&2). Specifically, the proposed change would modify the surveillance frequency of the nozzles in the Quench Spray and the Recirculation Spray Systems at NA–1&2.

The proposed changes to the surveillance requirements for the nozzles in the Quench Spray System and Recirculation Spray Systems are consistent with the intent of Generic Letter 93–05, "Line-Item Technical Specifications Improvement to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993, which is to improve safety, decrease equipment degradation, and reduce unnecessary burden on personnel resources by reducing testing requirements that are marginal to safety.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed reduced testing frequency of the Spray Systems nozzles does not change the way the systems are operated or the Spray Systems operability requirements. The proposed change to the surveillance frequency of safety equipment has no impact on the probability of an accident occurrence nor can it create a new or different type of accident. NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements," dated December 1992, concluded that the corrosion of stainless steel piping is negligible during the extended surveillance interval. Since the Spray Systems are maintained dry there is no additional mechanism that could cause blockage of the spray nozzles. Thus, the nozzles in the Spray Systems will remain operable during the ten year surveillance interval to mitigate the consequence of an accident previously evaluated. To date, no clogging or blockage of the nozzles in the Spray [System] during the five year surveillance tests [has] been observed at . . . North Anna. Testing of the Spray Systems nozzles at the proposed reduced frequency will not increase the probability of occurrence of a postulated accident or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed reduced frequency testing of the Spray Systems' nozzles does not change the way the Spray Systems are operated. The reduced frequency of testing of the spray nozzles does not change plant operation or system readiness. The reduced frequency testing of the Spray Systems' nozzles does not generate any new accident precursors. Therefore, the possibility of a new or different kind of accident previously evaluated is not created by the proposed changes in surveillance frequency of the Spray Systems nozzles.

3. Involve a significant reduction in a margin of safety.

Reduced testing of the Spray Systems' nozzles does not change the way the Systems are operated or the Spray Systems' operability requirement. NUREG–1366 concluded that the corrosion of stainless steel piping is negligible during the extended surveillance interval. Since the Spray Systems are maintained dry there is no additional mechanism that could cause blockage of the Spray Systems' nozzles. Thus, the proposed reduced testing frequency is adequate to ensure spray nozzle operability. The surveillance requirements do not affect the margin of safety in that the operability requirements of the Spray Systems remains unaltered. The existing safety analysis remains bounding. Therefore, no margins of safety are adversely affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: February 25, 1994

Description of amendment request: The proposed changes would revise the

surveillance frequency from 5 years to 10 years for the spray nozzles in the containment spray and recirculation spray systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry [Units 1 and 2] in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed reduced testing frequency of the Spray Systems' nozzles does not change the way the systems are operated or the Spray Systems' operability requirements. The proposed change to the surveillance frequency of safety equipment has no impact on the probability of an accident occurrence nor can it create a new or different type of accident. NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements," dated December 1992, concluded that the corrosion of stainless steel piping is negligible during the extended surveillance interval. Since the Spray Systems are maintained dry there is no additional mechanism that could cause blockage of the spray nozzles. Thus, the nozzles in the Spray Systems will remain operable during the 10 year surveillance interval to mitigate the consequence of an accident previously evaluated. To date, no clogging or blockage of the nozzles in the Spray Systems during the five year surveillance tests have been observed at Surry. Testing of the Spray Systems' nozzles at the proposed reduced frequency will not increase the probability of occurrence of a postulated accident or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed reduced frequency testing of the Spray Systems' nozzles does not change the way the Spray Systems are operated. The reduced frequency of testing of the spray nozzles does not change plant operation or system readiness. The reduced frequency testing of the Spray Systems' nozzles does not generate any new accident precursors. Therefore, the possibility of a new or different kind of accident previously evaluated is not created by the proposed changes in surveillance frequency of the Spray Systems nozzles.

3. Involve a significant reduction in a margin of safety.

Reduced testing of the Spray Systems' nozzles does not change the way the Systems' are operated or the Spray Systems' operability requirement. NUREG–1366 concluded that the corrosion of stainless steel piping is negligible during the extended surveillance interval. Since the Spray Systems are maintained dry there is no additional mechanism that could cause blockage of the Spray Systems' nozzles. Thus, the proposed reduced testing frequency is adequate to ensure spray nozzle operability. The surveillance requirements do not affect the margin of safety in that the operability requirements of the Spray Systems remains unaltered. The existing safety analysis remains bounding. Therefore, no margins of safety are adversely affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: February 17, 1994

Description of amendment request: The amendment proposes to modify the Technical Specifications (TS) to reflect management and organizational changes at the Washington Public Power Supply System (the licensee) for operation of the WNP–2 facility. The proposed changes would (1) modify the reporting responsibility of the quality assurance organization from the Managing Director to the Assistant Managing Director, Operations (AMDO), and (2) modify the appointment authority for the Corporate Nuclear Safety Review Board (CNSRB) from the Managing Director to the AMDO. These changes are proposed to reflect the current designation of the AMDO as the licensee's designated official with corporate responsibility for overall plant nuclear safety, and as the direct report for the CNSRB.

In addition, the proposed change would (1) delete the specific requirement for health physics/chemistry program procedures, (2) modify the titles of two positions on the Plant Operations Committee (POC) to reflect revised organizational titles, (3) modify the CNSRB quorum requirements from nine personnel to a minimum of nine personnel, and (4) delete the requirement that the CNSRB Executive Secretary be designated from the CNSRB membership.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

All of the proposed changes are administrative in nature, and do not involve any change in the design or operation of the plant. None of the changes affect any initiating events, nor do they affect plant response to postulated events already analyzed. The proposed changes do not, therefore, affect the probability or consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the design, operation, maintenance, or testing of the plant. They do not, therefore, create the possibility for any new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The proposed changes do not affect any accident analyses, and do not, therefore, affect any of the margins of safety affected by the design or operational limitations of the plant. The proposed changes do not, therefore, affect any margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502

NRC Project Director: Theodore R. Quay

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 23, 1994

Description of amendment request: The proposed amendment revises Technical Specification 3.8.1.1, AC Sources Operating, and 3.8.1.2, AC Sources Shutdown, to increase the minimum volume of fuel oil required

for the emergency diesel generator fuel oil day tanks. Several other changes have been proposed to correct editorial errors related to previously issued amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current minimum required volume of the day tanks as given in Technical Specifications 3.8.1.1 and 3.8.1.2 is based on fuel oil with a specific gravity value in the upper range of values allowed by the technical specifications. Calculations made using fuel oil with a specific gravity of 39 degrees API, which is the minimum allowed specific gravity, indicate a larger minimum required volume is needed in the day tanks. The increased minimum required volume provides additional conservatism for the day tanks to perform their intended safety function based on the possibility of using different specific gravity fuel oil. The proposed change will not prevent the Emergency Diesel Generator fuel oil system from performing its design function, nor require the system to be operated in a manner different than that for which it was designed. Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

There is no new type of accident or malfunction being created and the method and manner of plant operation remains unchanged. The safety design bases in the Updated Safety Analysis Report (USAR) have not been altered, and current operating requirements of the Emergency Diesel Generators remain unchanged. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The basis for the existing emergency fuel oil day tank level requirements is to ensure that sufficient fuel oil is available to meet the operational requirements specified in ANSI N195–1976. This proposed change to the minimum required storage volume of the day tanks is based on revised calculations performed in accordance with ANSI N195–1976 using conservative data. This proposed change will not change the operation of the plant. Thus, the proposed change will continue to ensure the Emergency Diesel Generator operating requirements. There are no changes being made to the safety limits or safety system settings that would adversely impact plant safety. Therefore, the proposed change will not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 24, 1994

Description of amendment request: The proposed amendment revises Technical Specification 3.9.4, Containment Building Penetrations, to allow use of temporary alternate closure methods for the emergency personnel escape lock and containment wall penetrations, during alterations of the core or movement of irradiated fuel within the containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of a previously evaluated accident is not increased because failure to maintain containment closure is not an initiating condition for fuel handling an accident. The use of temporary alternate closure methods for the emergency personnel escape lock and containment wall penetrations does not introduce any new potential accident initiating condition during refueling operation.

The consequences of an accident previously evaluated is not increased because the use of temporary alternate closure methods for the emergency personnel escape lock and containment wall penetrations will provide the assurance of containment closure during refueling activities. The ability of [the] containment to restrict the release of any fission product radioactivity to the environment remains unchanged.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The failure of the temporary alternate closure methods for the emergency personnel escape lock and containment wall penetrations during refueling will not result in a malfunction of any other plant equipment. The sole purpose of establishing containment closure for refueling is to restrict the release of any fission product radioactivity in the event of a fuel handling accident.

3. The proposed change does not involve a significant reduction in the margin of safety.

The temporary alternate closure methods for the emergency personnel escape lock and containment wall penetrations will provide the same assurance of containment closure during refueling for credible accident scenarios. The ability of containment to restrict the release of any fission product radioactivity to the environment, should a fuel handling accident occur, remains unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 24, 1994

Description of amendment request: The proposed amendment revises Technical Specification 4.7.1.2.1.a to require that the turbine-driven and motor-driven auxiliary feedwater pumps be tested at least quarterly on a staggered test basis instead of the currently required testing once per 31 days on a staggered test basis. In addition, the proposed changes would revise Technical Specification Bases 3/4.7.7, Emergency Exhaust System—Auxiliary Building, and 3/4.9.13, Emergency Exhaust System—Fuel Building, to eliminate the reference to the use of automatic control for the emergency exhaust system heaters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change only revises the surveillance requirement for the auxiliary feedwater pumps. The purpose of this surveillance requirement is to prove that the pumps are operable. The longer test interval should result in greater availability by reducing the rate of test induced failures which should offset any loss in reliability. The revised surveillance requirement does not affect the probability of accident initiation. The operability of the pumps is maintained and therefore the consequences of evaluated accidents is unaffected by the proposed change. The revised surveillance frequency is consistent with the guidance issued in Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

Changes to the emergency exhaust system technical specifications eliminate the words "using automatic control" associated with the humidity controlling heaters. These changes reflect the current method in which the fuel building emergency exhaust system heaters are controlled in that humidity sensors are bypassed to allow continuous operation of the heaters whenever the emergency exhaust system fans are operating. The proposed changes do not affect the probability of initiating an accident previously evaluated. The ability of the emergency exhaust systems to mitigate the consequences of an accident are likewise unaffected since the heaters remain available and operating to control humidity.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Verification of pump operability is still maintained with the change to the frequency of the surveillance requirement. No system configuration changes are being implemented in order to perform the surveillance testing and any potential accidents that may be associated with the surveillance testing were previously considered. The changing of the surveillance frequency does not introduce any additional failure modes for the auxiliary feedwater system.

The proposed revisions to the emergency exhaust system technical specifications are limited to the automatic control of the humidity controlling heaters. The proposed change does not introduce any new potential challenges to fission product barriers or any new failure modes which might prevent the emergency exhaust systems from fulfilling their accident mitigating functions.

3. The proposed change does not involve a significant reduction in the margin of safety.

The inservice testing program will continue to ensure that auxiliary feedwater pumps operational readiness criteria are consistent with the requirements of ASME Section XI. System performance surveillances will continue to be conducted in accordance with the technical specifications. The proposed change does not significantly reduce the margin of safety because the availability and reliability of the auxiliary feedwater system are not significantly decreased and the heat removal requirements for the system are unchanged.

The proposed changes to the emergency exhaust system technical specifications affect the requirements to maintain heater control in the automatic mode. The proposed changes do not decrease the exhaust systems' actual ability to control humidity or alter the other functional requirements for the system. Therefore, the proposed change does not significantly reduce any margin of safety related to the performance of the emergency exhaust systems.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Suzanne C. Black

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: March 14, 1994

Description of amendment request: The proposed change to the Millstone Unit 2 Technical Specifications (TS) would provide a one-time extension of the surveillance frequency from the required 18-month to the next refueling outage but no later than September 30, 1994, of the power operated valves in the service water system (TS 4.7.4.1.b) and in the boron injection flow path (TS 4.1.2.2.c). This would extend the surveillance for these valves approximately 5 months. Date of publication of individual notice in **Federal Register**: March 23, 1994 (59 FR 13751).

Expiration date of individual notice: April 22, 1994

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was

published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: April 15, 1992, as modified December 8, 1992, June 25, 1993, and February 2, 1994

Brief description of amendment: This amendment revises the provisions in the Technical Specifications to incorporate Generic Letter 90–06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,'" power-operated relief valve requirements for power operation, and to modify the primary coolant system overpressure protection specification venting requirements.

Date of issuance: March 29, 1994

Effective date: March 29, 1994, with full implementation within 60 days

Amendment No.: 160

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 2, 1994 (59 FR 4937) The licensee's February 2, 1994, letter provided minor editorial changes which did not alter the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: January 18, 1994, as supplemented March 8, 1994.

Brief description of amendments: The proposed amendments remove the tables of containment penetration conductor overcurrent protective devices from the Technical Specifications (TS) in accordance with the guidance contained in Generic Letter 91–08, "Removal of Component Lists from Technical Specifications." The tables will be relocated to Chapter 16 of the Catawba Final Safety Analysis Report (Selected Licensee Commitments Manual).

Date of issuance: March 21, 1994

Effective date: March 21, 1994

Amendment Nos.: 114 and 108

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 16, 1994 (59 FR 7688) The March 8, 1994, letter provided clarifying information that did not change the scope of the January 18, 1994, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: January 13, 1993, as supplemented January 28 and April 26, 1993

Brief description of amendments: The amendments revise Technical Specifications (TS) 2.2.1, 3/4.1.2.5, 3/4.1.2.6, 3/4.3.3.12, 3/4.5.1, 3/4.5.4, 3/4.9.2, their associated Bases, and TS 6.9.1.9 to relocate the values of certain cycle-dependent limits from the TS to the Core Operating Limits Report.

Date of issuance: March 25, 1994

Effective date: To be implemented within 30 days from the date of issuance.

Amendment Nos.: 115 and 109

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 1, 1993 (58 FR 46227). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 25, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: January 10, 1994, as supplemented March 21, 1994

Brief description of amendments: The amendments revise Technical Specification (TS) Table 2.2–1 and TS 4.2.5 to allow a change in the method for measuring reactor coolant system flowrate from the calorimetric heat balance method to a method based on a one-time calibration of the reactor coolant system cold leg elbow differential pressure taps.

Date of issuance: March 30, 1994

Effective date: March 30, 1994

Amendment Nos.: 116 and 110

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 26, 1994 (59 FR 3743). The March 21, 1994, letter provided clarifying information that did not change the scope of the January 10, 1994, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 25, 1993, as supplemented December 3, 1993, and February 14, 1994.

Brief description of amendments: The amendments reduce the required minimum measured reactor coolant system flow from 385,000 gallons per minute (gpm) to 382,000 gpm.

Date of issuance: March 22, 1994
Effective date: To be implemented within 30 days from the date of issuance.
Amendment Nos.: 141 and 123
Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67842) The December 3, 1993, letter provided information in response to a staff's November 19, 1993, request for additional information. The February 14, 1994, letter requested NRC staff approval that the flow-reduction portion of the requested technical specification (TS) change be separated from the approval of the safety limit portion of the requested TS change. The resultant changes from the above described actions reduced the scope of the initial proposed no significant hazards consideration determination, but, otherwise, did not change the NRC staff's position that the three standards of 10 CFR 50.92(c) are satisfied.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1994. No significant hazards consideration comments received: No.
Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: October 26, 1993
Brief description of amendments: These amendments change Technical Specification 4.6.1.2.a, Containment Leakage Surveillance Requirements, to be consistent with the guidance of NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants."
Date of Issuance: March 30, 1994
Effective Date: March 30, 1994
Amendment Nos.: 127 and 66
Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67845) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 1994. No significant hazards consideration comments received: No.
Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: May 21, 1993, as supplemented January 25, 1994.
Brief description of amendments: These amendments revise the containment design pressure from 59 psig to 55 psig.
Date of issuance: March 30, 1994
Effective date: March 30, 1994
Amendment Nos. 160 and 154
Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36434) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 1994. No significant hazards consideration comments received: No
Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: July 28, 1993
Brief description of amendment: The amendment revised the Technical Specifications by changing the reporting frequency of the Radioactive Material Release Report and the 10 CFR 50.59 reporting of facility changes, tests, and experiments. This is to reflect the new requirements of 10 CFR Part 50. The Offsite Dose Assessment Manual (ODAM) will remain part of the Radioactive Material Release Report and be submitted on an annual basis. The request for reporting of the safety and relief valve challenge information six months after each refueling outage is denied.
Date of issuance: March 22, 1994
Effective date: March 22, 1994
Amendment No.: 196
Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48384) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 1994. No significant hazards consideration comments received: No.
Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, Docket No. 50–245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: January 14, 1994
Brief description of amendment: The amendment corrects an editorial error. Specifically, the amendment changes the reference in Limiting Condition for Operation (LCO) 3.4.D from "3.3.A through C" to "3.4.A, 3.4.B, and 3.4.C."
Date of issuance: March 24, 1994
Effective date: As of the date of issuance to be implemented within 60 days.
Amendment No.: 72
Facility Operating License No. DPR–21. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 16, 1994 (59 FR 7693) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 1994. No significant hazards consideration comments received: No.
Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company (NNECO), Docket No. 50–245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: November 22, 1993, as supplemented March 4, 1994.
Brief description of amendment: The amendment revises the Technical Specifications by clarifying the operability requirements relative to the design function of the scram discharge volume—water level high rod block. In addition, NNECO is adding a statement which defines operability and surveillance requirements for the rod block functions while the reactor mode selector switch is in the REFUEL or SHUTDOWN positions.
Date of issuance: March 30, 1994
Effective date: As of the date of issuance to be implemented within 60 days.
Amendment No.: 73
Facility Operating License No. DPR–21. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67851). The March 4, 1994, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's

related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: September 24, 1993

Brief description of amendment: The amendment removes the listing of "Enclosure Building Bypass Leakage Paths" from the Technical Specifications, and makes a number of editorial changes.

Date of issuance: March 24, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 89

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59752). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 19, 1990, and June 1, 1992, as supplemented by letters dated February 1, 1993, and February 25, 1994.

Brief description of amendment: The amendment changes the Technical Specification (TS) by revising the pressure-temperature limits in TS 2.1.2 and would make the limits valid for 20 effective full-power years of operation. The amendment also modifies TS 2.1.1 to change the minimum requirements for starting a non-operating reactor coolant pump and modifies TS 2.3(3) to change the requirements for disabling high-pressure safety injection pumps during scheduled heatup and cooldown operations. Lastly, the amendment modifies TS 2.1.6 to change the power-operated relief valve limiting conditions of operation and surveillance requirements. The amendment request was filed in response to Generic Letter 90–06.

Date of issuance: March 23, 1994

Effective date: March 23, 1994

Amendment No.: 161

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30255). The additional information contained in the supplemental letters dated February 1, 1993 and February 25, 1994, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 23, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 17, 1993

Brief description of amendment: The amendment made changes to the Technical Specification (TS) to revise the minimum requirement of fuel oil that must be in the Emergency Diesel Generator (EDG) fuel oil storage tank in TS 2.7(1).

Date of issuance: March 29, 1994

Effective date: 120-days from the date of issuance.

Amendment No.: 162

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52991). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendment: February 17, 1994 (Reference LAR 94–02)

Brief description of amendment: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," as follows:

(1) Table 3.3–3, functional unit 6.c.2), channels to trip, would be changed from 2/steam generator in one steam generator to 2/steam generator in any 2 steam generators, due to an administrative error.

(2) Table 3.3–4 would be changed as follows:

a. Functional Unit 4.e., Negative Steam Pressure Rate—High, trip setpoint and allowable value, would be changed from −100 psi/sec and −105.4 psi/sec to 100 psi and 105.4 psi, respectively.

b. A note would be added stating that the time constants utilized in the rate-lag controller for Negative Steam Pressure Rate—High, are equal to 50 seconds.

Date of issuance: April 1, 1994

Effective date: 30 days after the date of issuance.

Amendment Nos.: 92 and 91

Facility Operating License Nos. DPR–80 and DPR–82: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1994 (59 FR 9789). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 27, 1993

Brief description of amendments: These amendments delete the requirement for the 1) Plant Manager or Superintendent-Operations, 2) Assistant Superintendent-Operations, and 3) Superintendent-Technical or Engineer-Systems to hold a Senior Reactor Operator (SRO) license, and add the requirement for the Senior Manager-Operations to hold an SRO license.

Date of issuance: March 22, 1994

Effective date: March 22, 1994

Amendments Nos.: 185 and 190

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 8, 1993 (58 FR 64613). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 11, 1994

Brief description of amendment: The amendment provides one-time relief from the requirement to perform Type C tests (local leak rate tests) at intervals of no greater than 2 years for the shutdown cooling isolation valves (10MOV–17 and 10MOV–18). This one-time only delay, until the next refueling outage currently scheduled to begin in November 1994, was requested for the performance of these leakage tests. The request was necessitated by the extended 1991–1993 refueling outage and the length of the current operating cycle.

Date of issuance: March 18, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 208

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 2, 1994 (59 FR 4946) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: May 18, 1993, as supplemented March 3, 1994

Brief description of amendment: The amendment revised the Technical Specifications (Appendix A) and the Radiological Environmental Technical Specifications (Appendix B) to incorporate the changes listed below:

(1) The frequency of city water connection to charging pumps and boric acid piping testing (specified in Appendix A Table 4.1–3) was changed to accommodate operation on a 24-month cycle.

(2) The frequency of boric acid tank level instrument calibration (specified in Appendix A Table 4.1–1) was changed to accommodate operation on a 24-month cycle.

(3) The frequency of boric acid makeup flow instrument calibration (specified in Appendix A Table 4.1–1) was changed to accommodate operation on a 24-month cycle.

(4) The frequency of primary water storage tank level instrument calibration and functional testing (specified in Appendix B Table 3.1–1) was changed to accommodate operation on a 24-month cycle.

These changes followed the guidance provided in Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24–Month Fuel Cycle," as applicable.

Date of issuance: March 21, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 144

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 23, 1993 (58 FR 34089) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: December 20, 1993

Brief description of amendment: The Technical Specifications (TSs) amendment revised Section 3.3.D.1.a, and associated Bases in Sections 3.3 and 4.4, to allow for the disconnection of those portions of the weld channel pressurization system that become inoperable and are not practicably accessible for repair. Additionally, the amendment revised TSs 3.3.B.3.b and 3.3.E.3.b, and the Bases of Section 3.3, to correct previous administrative errors.

Date of issuance: March 31, 1994

Effective date: As of the date of issuance to be implemented prior to exceeding cold shut down from the current outage.

Amendment No.: 145

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 19, 1994 (59 FR 2870) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: November 24, 1993, as supplemented February 15, 1994.

Brief description of amendments: The amendments change the TS to modify the requirements of TS 3.3.1 and 3.3.2. The proposed changes relocate Tables 3.3–2 and 3.3–5, which provide the response time limits for the reactor trip system and the engineered safety features actuation system instruments, from the TS to the updated final safety analysis report.

Date of issuance: March 21, 1994

Effective date: March 21, 1994

Amendment Nos.: 105 and 98

Facility Operating License Nos. NPF–2 and NPF–8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: January 4, 1994 (59 FR 629) The February 15, 1994, submittal provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 7, 1993 (TS 93–16)

Brief description of amendments: The amendments incorporate various

changes to the Administrative Controls section of the technical specifications and the Sequoyah Operating License. These changes include overtime approval authority, titles for the Plant Operations Review Committee, Radiological Assessment Review Committee requirements, Offsite Dose Calculation Manual implementation, Quality Assurance Program procedures, condenser in-leakage monitoring requirements, and changes to position titles and references.

Date of issuance: March 31, 1994

Effective date: March 31, 1994

Amendment Nos.: 178 and 169

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4948) The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated March 31, 1994. No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: February 8, 1994 TS 94–02

Brief description of amendment: The amendment modifies Operating License Condition 2.C.(17) to provide a limited extension of the surveillance test intervals for certain specified instrumentation on Unit 2 to coincide with the Cycle 6 refueling outage that is scheduled to start in July 1994. The surveillance intervals that are affected will not exceed 28 months for 18-month surveillances and 46 months for the 3-year Containment fire hose hydrostatic surveillance test.

Date of issuance: March 31, 1994

Effective date: March 31, 1994

Amendment No.: 170

Facility Operating License Nos. DPR–79: Amendment revises the technical specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10015) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1994. No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: November 13, 1992, as supplemented on July 15 and November 10, 1993.

Brief description of amendment: The proposed amendment would revise Appendix A, TS 3/4.3.1, "Reactor Protection System (RPS) Instrumentation" and TS 3/4.3.2.3, "Anticipatory Reactor Trip System (ARTS) Instrumentation" to increase RPS and ARTS channel functional test surveillance test intervals and RPS allowed out of service times. These requests are made based on the NRC approved Babcock & Wilcox Topical Report, BAW–10167. Also, the addition of an action statement to permit continued operation for 48 hours with two RPS channels inoperable and to remove channel functional test surveillance requirements for source and intermediate range neutron flux instrumentation is requested. Finally, a revision to Table 4.3–1 to decrease the channel calibration surveillance test interval for the "High Flux Number of Reactor Coolant Pumps On" trip is proposed.

Date of issuance: March 28, 1994

Effective date: March 28, 1994

Amendment No. 185

Facility Operating License No. NPF–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41516) The July 15 and November 10, 1993 letters, provided supplemental information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 4, 1993

Brief description of amendment: The amendment revises the plant Technical Specifications (TSs) to modify the requirement for periodic surveillance of the emergency diesel generators (EDGs) to permit a slow start in place of the existing requirement to perform a monthly fast start. A fast start shall be performed every 6 months. The amendment also allows engine prelubrication and warmup when an EDG is started for surveillance testing.

Date of issuance: March 22, 1994

Effective date: March 22, 1994

Amendment No.: 138

Facility Operating License No. DPR–28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 24, 1993 (58 FR 62157) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland, this 6th day of April.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–8780 Filed 4–12–94; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc.; Partial Withdrawal of Application For Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee), to partially withdraw its November 16, 1993, application for proposed amendment to Facility Operating License No. NPF–38 for the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The amendment revised the Technical Specifications (TSs) to provide acceptable conditions for operation when: (1) The core operating limits supervisory system (COLSS) is in service and neither control element assembly calculator (CEAC) is operable and (2) the COLSS is out of service and either or both CEACs are operable.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 5, 1994 (59 FR 620). However, by supplemental letter dated April 5, 1994, the licensee

partially withdrew the proposed change pertaining to the increase of the required power operating limit reduction from 13 percent to 16 percent for limiting anticipated operations occurrences with both CEACs inoperable.

For further details with respect to this action, see the application for amendment dated November 16, 1993, and the licensee's letter dated April 5, 1994, which partially withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 6th day of April 1994.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV-1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94-8846 Filed 4-12-94; 8:45 am]

BILLING CODE 7590-01-M

[IA 94-004]

Mr. Douglas D. Preston; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Douglas D. Preston was employed by the Berry Construction Company at the Iowa Electric Light and Power Company's (IELPC or Licensee) Duane Arnold Energy Center where he was granted unescorted access. IELPC holds Facility License DPR-49, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on February 22, 1974. The license authorizes IELPC to operate the Duane Arnold Energy Center located near Cedar Rapids, Iowa, in accordance with the conditions specified therein.

II

Mr. Preston first applied for employment with Berry Construction Company and was subsequently granted unescorted access to the Duane Arnold Energy Center on or about June 19, 1990, based in part on the representations he made on his access authorization applications. One of the representations was that he had not been arrested and convicted for any criminal offense other than minor traffic violations. The Licensee submitted fingerprint cards to the Federal Bureau of Investigations (FBI) and subsequently was informed that Mr. Preston had a record of arrests, convictions, and imprisonments prior to 1978. However, while waiting for the results of the FBI fingerprint check, Mr. Preston's employment at the Duane Arnold Energy Center was terminated for a lack of work. Mr. Preston's deliberate false statements on his access authorization application on or about June 19, 1990 were essentially the same as his 1993 false statements (addressed below), but are not being cited in this Order as a violation because they were made before the effective date of 10 CFR 50.5.

On June 21, 1993, Mr. Preston again applied for a position at the Duane Arnold Energy Center and was hired on June 21, 1993 by the Berry Construction Company as a laborer with responsibilities involving NRC-licensed activities. On June 23, 1993, Mr. Preston filled out an access authorization application and again denied having a criminal history. The Licensee granted Mr. Preston temporary unescorted access to the plant on or about July 15, 1993. On or about August 13, 1993, the Licensee received the results of a second FBI fingerprint check which again detailed Mr. Preston's criminal history. Mr. Preston, when questioned by an IELPC investigator on August 13, at first denied having a criminal history and then admitted that he had lied about his criminal history to gain employment in 1990 and again in 1993. He further stated that he would lie again to gain employment in the future. The Licensee than revoked Mr. Preston's unescorted access based on the deliberately false information regarding his criminal history on his access authorization application.

III

Based on the above Mr. Preston engaged in deliberate misconduct on or about June 23, 1993, by deliberately falsely stating on the access authorization application that he had no criminal history for crimes other than minor traffic offenses. The Commission's regulations in 10 CFR 50.5, in part, prohibit any employee of a contractor of a licensee from literately submitting to the licensee information that the employee knows to be incomplete or inaccurate in some respect material to the NRC. Mr. Preston's actions constitute a violation of 10 CFR 50.5(a). Information concerning criminal history is material to the determination the licensee must make to meet 10 CFR 73.56(b)(2).

IV

The NRC must be able to rely on the Licensee, its contractors, and the licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Preston's actions in deliberately providing false information to the Licensee constitute deliberate violations of Commission regulations and his statement to the Licensee that he would do it again have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC in the future.

Consequently, I lack the requisite reasonable assurance that nuclear safety activities within NRC jurisdiction can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Preston were permitted to be engaged in the performance of licensed activities. Therefore, the public health, safety and interest require that Mr. Preston be prohibited from being involved in the performance of activities licensed by the NRC for a five year period. In addition, Mr. Preston is required to notify the NRC, for an additional five year period, of his acceptance of employment in NRC-licensed activities so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the deliberate misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 50.5, *it is hereby ordered, effective immediately, that*:

A. Mr. Douglas D. Preston is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. For the purposes of this Order, licensed activities include the activities licensed or regulated by: (1) NRC; (2) an Agreement State, limited to the Licensee's conduct of activities within NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State where the licensee is involved in the distribution of products that are subject to NRC jurisdiction.

B. After the five year prohibition has expired as described in paragraph A above, Mr. Preston shall provide notice to the Director, Office of Enforcement,

U.S. Nuclear Regulatory Commission, Washington, DC 20555, for acceptance of any employment in licensed activity for an additional five year period.

The Regional Administrator, Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Preston of good cause.

VI

In accordance with 10 CFR 2.202, Mr. Preston must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Preston or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532–4351, and to Mr. Preston, if the answer or hearing request is by a person other than Mr. Preston. If a person other than Mr. Preston requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Preston or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Preston, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 5th day of April 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–8847 Filed 4–12–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Order No. 1009; Docket No. A94–8]

Benedict, MN 56436 (Irving E. Morrill, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued April 7, 1994.

Docket Number: A94–8.

Name of Affected Post Office: Benedict, Minnesota 56436.

Name(s) of Petitioner(s): Irving E. Morrill.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: April 5, 1994.

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 the light of the 120-day decision schedule, the Commission reserves the right to 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 Commission reserves the right to ask petitioners for more information.

If the Postal Service files a brief or motion to dismiss or a motion to affirm the appeal, the Postal Service may incorporate by reference any memoranda it previously filed in this docket.

The Commission orders: (a) The Postal Service shall file the record in this appeal by April 20, 1994.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

April 5, 1994, Filing of Appeal letter

April 7, 1994, Commission Notice and Order of Filing of Appeal

May 2, 1994, Last day of filing of petitions to intervene (see 39 CFR 3001.111(b))

May 10, 1994, Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b))

May 31, 1994, Postal Service's Answering Brief (see 39 CFR 3001.115(c))

June 15, 1994, Petitioner's Reply Brief should Petitioner choose to file one (see 39 CFR 3001.115(d))

June 22, 1994, 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 CFR 3001.116)

August 3, 1994, Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(b)(5))

[FR Doc. 94–8799 Filed 4–12–94; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33867; File No. SR–BSE–94–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Its Fee Schedules

April 6, 1994.

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 February 22, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and amended such proposed rule change on March 8, 1994,[1] as

[1] The amendment removes a provision which provided for a $.50 charge to specialists on non-internalized orders executed by the specialist in stocks subject to competition under the proposed Competing Specialist Initiative. See letter from John I. Fitzgerald, Executive Vice President, Boston Stock Exchange, to Howard Kramer, Associate Director, Division of Market Regulation,

described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange seeks to amend its fee schedules pertaining to listing, specialist trade processing, and transaction fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule filing is to amend several of the Exchange's fee schedules in order to capitalize on the competitive niches that the Exchange currently enjoys and to improve the Exchange's competitive position. The proposal would (1) establish a $250.00 non-refundable listing application fee, which upon acceptance by the Exchange for listing would be applied toward the $750.00 listing fee; (2) provide a $1.50 per trade credit on all non-internalized market orders ranging in size from 100 up to 2,500 shares; (3) reduce the specialist post clearing and cashiering fee from $1375.00 to $500.00 per specialist book per month; (4) eliminate charges on pre-opening trades and trades in CTA securities ranked above 1000; and (5) establish a security routing fee of $500.00 per month per BEACON User ID with stocks being routed to that ID. For purpose of the market order credit, "non-internalized" shall mean all orders directed to the Exchange in stocks in which the routing firm has no affiliation with or financial interest in the specialist operation registered in those stocks. In addition, specialists will be charged a new fee of $.50 per trade for certain market orders. The specific new language is as follows: [deleted language]; *new language*

LISTING FEES

Listing Application Fee: $250.00 per original listing application. Fee is non-refundable, but will be applied toward the $7,500 original listing fee upon acceptance for listing.

TRANSACTION FEES

Value Charges	
Market Order Credit (non-internalized orders from 100 up to $2,500 shares).*	*$1.50 per trade credit.*

*Credit is limited to total transaction costs.

FLOOR OPERATION FEES

Specialist Post Clearing and Cashiering.	*$500.00* [$1375.00] per specialist book per month
Specialist Trade Processing	
Pre-Opening Trades.	*No Charge*
Trades in CTA Securities Ranked Above 1000.	*No Charge*
*Market Orders*** ...	*$.50 per trade*
Round Lot/Odd Lot Trades.	$.75 per trade side
Trading Account Trades.	$5.00 per trade side
Security Routing Fee	*$500.00 per month per BEACON User ID with routed stocks*

**Charge per non-internalized market order from 100 up to 2500 shares. This charge is not applicable to any stock subject to competition under the Competing Specialist Initiative.

2. Statutory Basis

The statutory basis for this proposal is section 6(b)(4) 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 burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Secretaries and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–02 and should be submitted by May 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8807 Filed 4–12–94; 8:45 am]

BILLING CODE 8010–01–M

Commission, dated March 28, 1994. The BSE's proposed Competing Specialist Initiative is currently still under consideration and is the subject of a pending rule filing (File No. SR–BSE–93–12) and is currently under consideration. See Securities Exchange Release No. 32549 (June 29, 1993), 58 FR 36229 (July 6, 1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

April 7, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

JDN Realty Corp.

Common Stock, $.01 Par Value (File No. 7–12236)
Ford Motor Company
Common Stock, $1.00 Par Value (File No. 7–12237)
Healthsource, Inc.
Common Stock, $.10 Par Value (File No. 7–12238)
Banco Frances Del Rio de Plata SA
American Depositary Shares, No Par Value (File No. 7–12239)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 28, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8804 Filed 4–12–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

April 7, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

America West Airlines
Common Stock, $.01 Par Value (File No. 7–12265)
Grupo Embotellador de Mexico S.A. de C.V.
(Global Depositary Shrs.) (each rep. 2 Ord. Participation Certificates), No Par Value (File No. 7–12266)
Security Capital Industries Trust
(Shrs. of Beneficial Inter.), $.01 Par Value (File No. 7–12267)
JDN Realty Corporation
Common Stock, $.01 Par Value (File No. 7–12268)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 28, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8803 Filed 4–12–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

April 7, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Alabama Power Co.
6.40% Class A Pfd. Cm., $1.00 Par Value (File No. 7–12240)
Alabama Power Co.
Adj. Rte. Class A Pfd. (1993 Ser.) Cm., $1.00 Par Value (File No. 7–12241)
Bay Apartment Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–12242)
Bear Stearns Finance LLC
8% Exch. Pfd. Inc. Cm. Sh. Ser. A (EPICS) (File No. 7–12243)
Beazer Homes USA, Inc.
Common Stock, $.01 Par Value (File No. 7–12244)
British Telecommunications PLC
2nd Installment American Depositary Shares (rep. 10 Interim Ord. Shares) (File No. 7–12245)
Chiquita Brands International, Inc.
Non-Vot. Cm. Pfd. Ser. A (File No. 7–12246)
Delaware Group Global Dividend & Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12247)
Emerging Tigers Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–12248)
Global Privatization Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12249)
Harveys Casino Resorts
Common Stock, $.01 Par Value (File No. 7–12250)
India Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12251)
Intercapital Insured California Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12252)
Intercapital Insured Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12253)
Jardine Fleming India Fund, Inc.
Common Stock, $.001 Par Value (File No 7–12254)
KeyCorp
Depositary Shares (rep. 1/8 sh. 10% Cm. Pfd. Class A $5.00 Par Value (File No. 7–12255)
Martin Marietta Materials, Inc.
Common Stock, $.01 Par Value (File No. 7–12256)
Morgan Stanley India Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12257)
Nations Government Income Term Trust 2004, Inc.
Common Stock, $.001 Par Value (File No. 7–12258)
New South Africa Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12259)
Southern Africa Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12260)
Telefonica de Argentina S.A.
American Depositary Shares (rep. 10 Class B Ord. Sh., P $1.00 Par Value) (File No. 7–12261)
Travelers, Inc.
5.50% Cv. Pfd. Ser. B, $1.00 Par Value (File No. 7–12262)
Western Gas Resources
$2.625 Cm. Cv. Pfd., $.10 Par Value (File No. 7–12263)
Western National Corp.
Common Stock, $.001 Par Value (File No. 7–12264)
Worldwide DollarVest Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–12265)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 28, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC

20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-8805 Filed 4-12-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33868; File No. SR-MSRB-94-2]

Self-Regulatory Organization; Municipal Securities Rulemaking Board

April 7, 1994.

In the matter of Self-regulatory organizations; order approving proposed rule change by the Municipal Securities Rulemaking Board relating to political contributions and prohibitions on municipal securities business and notice of filing and order approving on an accelerated basis amendment No. 1 relating to the effective date and contribution date of the proposed rule.

On January 12, 1994, the Municipal Securities Rulemaking Board ("MSRB") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MSRB-94-02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b-4 thereunder. The MSRB filed the proposal to adopt rules relating to political contributions and prohibitions on municipal securities business. The Commission published notice to the proposal in the **Federal Register** on January 21, 1994.[2] On February 4, 1994, the Commission extended the comment period for the proposal by 30 days, to March 11, 1994.[3] On March 29, 1994, the MSRB filed an Amendment to the proposal relating to the proposal's effective date and contribution date.[4]

The Commission received 69 comment letters on the proposed rule change. Twenty-four commentators favor the proposal and 33 oppose the proposal. Several commentators raise concerns without expressly favoring or opposing the proposal. Several commentators that favor the proposal make recommendations to better enable municipal securities dealers to comply with the proposal. The Commission has determined, for the reasons discussed below, to approve the proposed rule change.

I. Executive Summary

The MSRB's proposed rule change relating to political contributions and prohibitions on municipal securities business is intended to address practices known as "pay to play." These practices typically involve payments in the form of political contributions to help finance election campaigns of state or local officials or similar arrangements with these officials. Widespread reports regarding the existence of such practices has fueled industry and regulatory concerns. These practices directly affect municipal securities markets by increasing costs borne by issuers, dealers and ultimately investors, by creating artificial barriers to competition, and by undermining underwriter and market integrity. In 1993, state and local governments awarded negotiated underwriting contracts for the sale of more than $250 billion of municipal bonds, approximately 80% of all municipal securities underwritings, to facilitate the construction of schools, highways, hospitals, public housing, bridges, water and sewer systems, and other infrastructure projects needed to serve public needs and spur local and regional economic growth.[5] As of December 31, 1993, private investors, including households and mutual and money market funds, held more than $850 billion in municipal securities, representing approximately 70% of outstanding municipal securities.[6] While it is difficult to quantify the cost of fraudulent, unethical, and manipulative dealer selection practices, at a minimum, these practices substantially undermine the integrity of the municipal securities market. Congress recognized the importance of integrity in municipal securities financing when it directed the formation of the MSRB, as part of the Securities Acts Amendments of 1975, and authorized the MSRB to regulate the conduct of municipal securities dealers to, among other things, prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to free and open trade, and protect investors and the public interest.

As the self-regulatory organization ("SRO") charged with primary oversight of municipal securities dealers' activities, the MSRB has proposed a series of measures designed to prevent "pay to play" practices in the awarding of municipal securities business. These measures include a prohibition against municipal securities dealers, conducting certain types of municipal securities business with an issuer if the dealer or affiliated persons, subject to exceptions, made political contributions to officials of the issuer who could influence the awarding of that business. The measures also include separate provisions requiring municipal securities dealers to maintain records and to disclose aggregate information to facilitate compliance and examinations with the goal of promoting investor confidence in the integrity of the municipal securities market. As discussed below, the Commission believes that the proposal is consistent with the Act and will advance the goals of the Act.

II. Background

The market for municipal securities is characterized by great diversity and high volume and comprises an estimated 50,000 issuers including state governments, cities, towns, counties, and special subdivisions, such as special purpose districts and public authorities.[7] There are approximately 1.3 million municipal securities issues outstanding, representing over $1.2 trillion in securities.[8] In 1993, 17,000 new issues took place with a record value of $335 billion.[9] As discussed

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 33482 (January 14, 1994), 59 FR 3389.

[3] Securities Exchange Act Release No. 33583 (February 4, 1994), 59 FR 6320.

[4] As originally submitted, the proposal's prohibitions on municipal securities business would arise from contributions made on or after April 1, 1994. The MSRB filed an amendment to change the April 1, 1994 date to a date 10 days after publication in the **Federal Register** of the Commission order approving the proposal. The MSRB also amended the proposal to change the effective date of the proposal's disclosure and recordkeeping requirements to a date 10 days after publication of the approval order in the **Federal Register**. File No. SE-MSRB-94-2, Amendment No. 1 (March 29, 1994).

[5] See Public Securities Association, *Review of Studies of Competitive and Negotiated Financing of Municipal and Corporate Securities* (March 1994).

[6] Board of Governors of the Federal Reserve System, *Flow of Funds Accounts, Flows and Outstandings*, Fourth Quarter 1993 (March 9, 1994) ("Flow of Funds Accounts").

[7] Securities and Exchange Commission, Division of Market Regulation, *Staff Report on the Municipal Securities Market*, (September 1993) ("*Municipal Securities Report*") at 1.

[8] See *Flow of Funds Accounts, supra* note 6.

[9] This record financing was heavily influenced by refundings. Nevertheless, the level of long term new money financing, representing 49% of the financing for the year, reflected continued market growth. In 1993, there were $142 billion of new money long term financings, compared to $81 billion in 1988, a 75% increase. "A decade of Municipal Finance," *The Bond Buyer* (Jan. 6, 1994) at 24. See also Securities Act Release No. 7049, Securities Exchange Act Release No. 33741 (March 9, 1994).

Continued

below, negotiated underwritings have become the predominate method of underwriter selection. The MSRB's proposal is designed to address abuses involving political contributions inherent in using negotiated underwriting as a method of underwriter selection.

A. Increasing Use of Negotiated Underwritings

The types of securities generally issued by municipalities include general obligation bonds (secured by the full faith and credit and general taxing power of the issuer), revenue bonds (secured by the revenues of a particular project), and conduit bonds (securities issued to finance a project that is to be used in the trade or business of a third party, typically a private corporation or non-profit entity). At one time general obligation bonds were most prevalent. Today, however, most offerings consist of revenue bonds. During the past few years, the municipal bond market also has experienced a proliferation of complex derivative products.[10]

Although competitive bidding traditionally has been used for public financing,[11] in recent years negotiated underwritings have become much more common.[12] in 1993, negotiated underwritings accounted for approximately 80% of all long-term municipal bond offerings.

Competitive bidding offers the public some protection against the exertion of inappropriate influence on public officials by municipal underwriters. When bidding is done competitively and publicly, there is less possibility of collusion and political patronage. Because the competitive process offers all potential bidders equal opportunity to be awarded the deal, bidders must compete with one another based on the pricing of the issue and the willingness to accept market risk.[13]

In contrast to competitive underwritings, negotiated underwritings present greater risk of abuse in the underwriter selection process.[14] Issuers may become involved not only in selecting the lead underwriter, but also in controlling other provisions of the distribution. Selection may be based on nonmeritorious considerations, creating a genuine risk that underwriters will be selected on the basis of political influence rather than the quality of the underwriter's services in distributing the securities.[15]

B. "Pay to Play"

Recent reports regarding "pay to play" have raised concerns about the practices municipal securities dealers employ to obtain municipal securities business. There have been numerous reported instances where registered municipal securities dealers, their employees, and related parties, allegedly have made payments, political contributions, or entered into business ventures with political figures apparently to obtain the underwriting business of municipal securities issuers. Specific abuses have been alleged in several state and local governments including Alabama,[16] California,[17] Colorado,[18] the District of Columbia,[19] Florida,[20] Illinois,[21] Kentucky,[22] Massachusetts,[23] Michigan,[24] New

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59 FR 12748, and Securities Exchange Act Release No. 33742, (March 9, 1994), 59 FR 12759.

[10] Among these are principal and interest strips, pooled municipal investment vehicles, detachable call options, and new variable rate securities.

[11] At the time the Exchange Act was enacted, competitive bidding, in one form or another, was the most accepted method of financing used by municipalities and other public entities. L. Loss & J. Seligman, *Securities Regulation* 343 (1989). In competitive offerings, the issuer decides who will underwrite its bonds based almost entirely on price in response to the issuer's "notice of sale." Firms wishing to bid on an issue will include other firms in their syndicates based on their marketing or capital needs and the requirements of the issuer, if any. Some issuers will require the underwriting syndicate to include one or more firms with significant minority participation or specific regional capacity. This requirement usually is stated in the notice of sale. See MSRB, *Glossary of Municipal Terms*, (1985), definition of "competitive bid" or "competitive bidding."

[12] There can be an element of competition present in negotiated deals. In a negotiated offering, the issuer typically distributes a request for proposals ("RFP") to provide underwriting services for either a single issue, or more frequently, for a set period of years. Underwriters that are interested then submit their responses and the issuer will select one or more of the respondents to provide underwriting services. Issuers commonly select the entire management group in a negotiated offering, and often select most members of the selling group as well. Often an issuer will use the RFP process to "prequalify" a pool of underwriters as eligible to provide services and then select specific underwriters on a transaction by transaction basis. Consequently, the RFP process may not purge the selection process of undue influence. Notwithstanding the use of an RFP, issuers may award the municipal securities business according to existing non-merit based relationships with an underwriter.

In a large syndicate, one or more firms will serve as senior syndicate managers or co-managers; a second tier of firms will be designated as managers; the remaining syndicate members are the selling group. The issuer will also designate which of the managers will actually "run the books" and manage the syndicate. The senior managers and managers bear a risk of loss; members of the selling group do not bear this risk. Some issuers may select all the firms and delineate the position of each; others choose several firms as the management group, and give the senior syndicate managers discretion to choose members of the selling group (or name a few selling group members, and allow the senior managers to choose the remainder); still others will choose a senior manager and no others and the manager may or may not form a selling group.

[13] The Government Finance Officers Association ("GFOA") cites three advantages to competitive sales: assurance that the bonds are sold at the lowest cost in the prevailing market; lower gross underwriting spreads than negotiated sales, historically; and promotion of the appearance of an open, fair process. "Taxpayers have greater assurance that the bonds have been awarded at the lowest possible cost, and not for the benefit of underwriting firms engaged in political activities to support elected officials." *An Elected Official's Guide to Debt Issuance*, Kurish and Tigue, GFOA, Chicago, IL (1993) ("*Elected Official's Guide*").

[14] Negotiated sales do present advantages. GFOA notes three: ability to delegate tasks such as document preparation, sizing and structuring to the underwriter; pre-sale period in which structure may be tailored to investor demand; and flexibility to respond to market conditions. *Elected Official's Guide*. See also Public Securities Association, *Review of Studies of Competitive and Negotiated Financing of Municipal and Corporate Securities*, (March 1994).

[15] Regardless of whether an issue is competitive or negotiated, most issuers also employ financial advisers to assist in a bond offering. While some financial advisers are chosen on an issue by issue basis, others are retained to assist the issuer over a period of time. Financial advisers also are paid by the issuer, and their fees may be considered an expense of the offering.

[16] "Crying Cronyism, Lawmaker Seeks Alabama Ban on Negotiated Deals," *The Bond Buyer*, (February 7, 1994), at 1.

[17] "Curbs Sought on Bond Firm Contributions," *The Washington Post*, (January 14, 1994) at B2.

[18] "The Politics of Money," *U.S. News and World Report*, (September 20, 1993), at 67.

[19] "Lazard Pushed D.C. to Arrange Swaps With Merrill Lynch, D.C. Official Says," *The Bond Buyer*, (January 19, 1994), at 1; "Lazard Partner Says Firm Unaware of Ferber's Bid to Share D.C. Fees," *The Bond Buyer*, (January 20, 1994), at 1; "Cracking the 'Club' That Controls the Muni Bond Market," *The Washington Post*, (November 21, 1993), at H1.

[20] "The Bond Merchants: Wall Street Makes Millions on Municipal Bonds But Guess Who Pays?" *Common Cause Magazine*, (October 1993).

[21] "Chicago Confirms Being Subpoenaed by the Grand Jury in Ferber Inquiry," *The Bond Buyer*, (January 13, 1994), at 1; "Illinois Measure Would Restrict Campaign Giving by Bond Dealers," *The Bond Buyer*, (February 4, 1994), at 1; "Push to Curb Donations Not So Simple," *The Chicago Tribune*, (November 17, 1993), at 1.

[22] "At Trial, Kentucky's Bill Collins Gets Final Say as Prosecutors Hammer Away at the Gift Piano," *The Bond Buyer*, (October 11, 1993), at 1; "Kentucky Official Says He Served as Middleman to Solicit Funds," *The Bond Buyer*, September 7, 1993), at 1. Bill Collins is the husband of the former governor of Kentucky, Martha Layne Collins. On October 14, 1993, following a jury trial in the United States District Court for the Eastern District of Kentucky, he was convicted of extortion and conspiracy.

[23] "Treasurer's Office in Massachusetts Confirms Existence of Investigations," *The Bond Buyer*, (February 7, 1994), at 1; "Massachusetts Bars Merrill From Top Bond-Sale Role," *The Wall Street Journal*, (February 7, 1994), at C19; "Latest Accusations Leveled Against Ferber Provide New Details on 1990 MIFA Deal," *The Bond Buyer*, (December 21, 1993), at 1; "FEDs Subpoena MIFA For Second Time; Bond Documents Since 1982 Sought," *The Bond Buyer*, (January 27, 1994); "Papers Show New Links Between Ferber, Firm," *The Boston Globe*, (December 17, 1993), at 1.

[24] "Curbs Sought on Bond Firm Contributions," *The Washington Post*, (January 14, 1994), at B2.

Jersey,[25] New York,[26] Ohio,[27] Oklahoma,[28] and Wisconsin.[29] The widespread nature of the complaints concerning abuses has received considerable attention from Congress, the Commission, the MSRB, the securities industry, the media, and the public, reflecting concerns regarding the integrity, fairness, and sound operation of the municipal securities market.

C. Regulation of Municipal Securities Underwritings

It appears that "pay to play" practices are considered by many municipal securities dealers to be an ordinary cost associated with obtaining municipal underwriting business.[30] The widespread perception of such practices calls into question the integrity of the municipal securities market and the business practices some municipal underwriters utilize in order to obtain underwriting contracts. Several reports have suggested that the greatest cost of improper contributions is the cost to investors, taxpayers, and the public at large.[31]

As a result of reports alleging improper payments regarding the New Jersey Turnpike refunding, in May 1993, Congress requested the Commission, the MSRB, and the National Association of Securities Dealers ("NASD") to review the adequacy of regulation and oversight of the municipal securities market.[32]

This culminated in the Division's *Municipal Securities Report*,[33] and Congressional hearings on the municipal securities market held on September 9, 1993. The *Municipal Securities Report* recommended that "pay to play" contributions be addressed promptly.[34] The Staff stated that an MSRB proposal to require disclosure of political contributions and limiting campaign contributions for the purpose of obtaining underwriting business represented a positive first step to address the misuse of political contributions.[35]

The MSRB's efforts to examine the role of political contributions in the underwriting process pre-date recent public interest in the issue. In August 1991, the MSRB published a notice expressing concern that the process of selecting an underwriting team should not be influenced by political contributions, and encouraged underwriters, and state and local governments to maintain the integrity of the underwriter selection process.[36] In May 1993, the MSRB issued a press release noting continued concern by the MSRB, industry members, and others regarding political contributions.[37]

In August 1993, the MSRB published for comment draft rule G–37 ("August 1993 draft rule").[38] Although the majority of commentators supported the MSRB proposal, none gave unqualified support. After considering the commentators' concerns and suggestions at its November and December 1993 meetings, the MSRB proposed the instant rule change.

Some state officials and politicians have advocated or introduced legislation aimed at abuses resulting from political contributions and have made attempts to reform the municipal securities underwriter selection process.[39] Voluntary industry efforts also are underway to reduce the presence of inappropriate political influence peddling. On October 18, 1993, seventeen municipal securities dealers agreed to adopt a "Statement of Initiative," providing the political contributions made, in any manner, for the purpose of influencing the awarding of municipal finance business should be prohibited. To date, over 50 firms have agreed to adhere to the Statement of Initiative.[40]

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[25] "Lazard Freres, Merrill Lynch Fee Splitting Livens Debate," *The Bond Buyer*, (June 25, 1993), at 1; "New Jersey Turnpike, Merrill Lynch at Center of U.S. Attorney Probe," *The Bond Buyer*, (April 29, 1993), at 1; "N.J. Governor Bans Negotiated Underwriting at State Level," *The Bond Buyer*, (May 5, 1993), at 1; "Turnpike Officials Said Lazard Called the Shots," *The Bond Buyer*, (May 26, 1993), at 1; "Ferber Investigators Said to Pick Up Pace; Lazard Freres Subpoenaed, Others Wait," *The Bond Buyer*, (November 23, 1993), at 1.

[26] "Holtzman Dials Direct for Dollars, Asking Bankers to Help Pay Off Debt," *The Bond Buyer* (May 12, 1993), at 1; "Wall Street Executives Appear on List of Fund-Raiser for N.Y. Comptroller," *The Bond Buyer* (October 29, 1993), at 1; "Get Off McCall's Committee," *The Bond Buyer* (November 1, 1993), at 42; "NYC's Stein Urges Mayor, Comptroller to Copy New Jersey, Ban Negotiated Debt," *The Bond Buyer*, (May 12, 1993), at 1; "N.Y.C. Report Slams Holtzman For Negligence in Fleet Affair," *The Bond Buyer*, (September 16, 1993), at 1; "The Trouble With Consultants, The Market May be Getting Serious About Campaign Contributions, But There's More Ways to Peddle Influence," *The Bond Buyer*, (November 16, 1993), at 1; "Holtzman Says Loan Didn't Sway Choice of Fleet to Handle New York City Debt," *The Bond Buyer*, (April 26, 1993), at 1.

[27] "Armacon's Ohio Work a Smith Barney Favor After 1991 Lease Issue Soured in New Jersey," *The Bond Buyer*, (May 17, 1993), at 1.

[28] "Curbs Sought on Bond Firm Contributions," *The Washington Post*, (January 14, 1994), at B2; "SEC Investigates Oklahoma Issues for Possible Law Violations," *The Bond Buyer*, (November 23, 1993), at 1; "SEC Inspects Pike Bond Refinancing," *The Daily Oklahoman*, (November 19, 1993), at 1; "SEC Asks Agencies in Oklahoma for Data About Bond Issues," *The Wall Street Journal*, (November 24, 1993), at A5.

[29] "Curbs Sought on Bond Firm Contributions," *The Washington Post*, (January 14, 1994), at B2

[30] "Illegal Payments Mar the Muni Market," *The Wall Street Journal*, (May 5, 1993), at C1.

[31] "Bond Buyers' Gain, Taxpayers' Loss," *New York Times*, (September 5, 1993), at 11; "The Trouble With Munis, The Market is Sound, But Abuses Hurt Both Investors and Taxpayers," *Business Week*, (September 6, 1993), at 44.

[32] Letter from The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, United States House of Representatives, and The Honorable Edward J. Markey, Chairman, Subcommittee on Energy and Commerce, United States House of Representatives, to Mary L. Schapiro, Acting Chairman, Commission, Christopher A. Taylor, Executive Director, MSRB, and Joseph R. Hardiman, President and Chief Executive officer, NASD (May 24, 1993).

[33] *Supra* note 7.

[34] The Commission's Chairman Arthur Levitt testified that, "[w]hile the Commission remains confident of the strength and effectiveness of the municipal securities market, we also share the Subcommittee's concern that investor confidence in its integrity may have been impaired as a result of recent serious allegations of abusive practices." Testimony of Arthur Levitt, Chairman, Commission, Concerning the State of the Municipal Securities Market, Before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, United States House of Representatives (September 9, 1993).

[35] *Municipal Securities Report*, *supra* note 7, at 33.

[36] See MSRB Reports, Vol. 11, No. 3, (September 1991) at 11.

[37] See MSRB Reports, Vol. 13, No. 3, (June 1993) at 15.

[38] The draft proposal would have (1) prohibited brokers, dealers and municipal securities dealers and their associated persons from making political contributions directly or indirectly, to officials of issuers for the purpose of obtaining or retaining municipal securities business, and (2) required dealers and their associated persons to disclose, for a four-year period, all political contributions to officials of such issuers with whom they have done business.

[39] *E.g.*, House No. 1824, The Commonwealth of Massachusetts (a recently introduced bill to prohibit political contributions by investment bankers and bond counsel); The Commonwealth of Massachusetts Joint Statement on Debt Policy (issued to "[r]eaffirm and extend the statutory presumption that all Commonwealth Debt * * * shall be issued on a competitive, sealed-bid (lowest true interest cost) basis, and establish standards for rebutting that presumption * * *; [e]stablish a basic framework for the establishment of procurement processes for the selection of underwriters, financial advisors and attorneys * * *; [and] [f]urther the practice of requiring disclosure by underwriters, financial advisors and attorneys which fosters the elimination of conflicts of interest among those which serve the Commonwealth * * * in * * * issuances of debt."). The Commonwealth of Massachusetts Treasury Department (October 27, 1993).

See also "Crying Cronyism, Lawmaker Seeks Alabama Ban on Negotiated Deals," *The Bond Buyer*, (February 7, 1994), at 1; "Curbs Sought on Bond Firm Contributions," *The Washington Post*, (January 14, 1994), at B2; "Shapiro of Maine Seeks MSRB Ban on Political Contributions from Bond Firms," *The Bond Buyer*, (May 14, 1993), at 1; N.J. Governor Bans Negotiated Underwriting at State Level," *The Bond Buyer*, (May 5, 1993), at 1; "Following SEC, Texas Authority Seeks Disclosure on Political Gifts," *the Bond Buyer*, (June 23, 1993), at 1; "Massachusetts Bars Merrill From Top Bond-Sale Role," *The Wall Street Journal*, (February 7, 1994), at C19; "Municipal Bond Group Urges End To Being Solicited," *The Wall Street Journal*, (October 8, 1993), at C1.

[40] Some state and local officials have stated their intention to boycott those firms that voluntarily stop political contributions. The Florida

Continued

While the Commission views the voluntary efforts of those firms adhering to the Statement of Initiative as laudable, these actions represent only a first step. The MSRB's proposed rule change marks a second step: industry-wide reform intended to respond to the detrimental effects of conflicts of interest.

III. Description

The proposed rule change would establish industry-wide restrictions and requirements aimed at preventing fraudulent and manipulative practices, promoting just and equitable principles of trade, removing impediments to free and open trade, and protecting investors and the public interest. The MSRB's proposal is intended to address the real as well as perceived abuses resulting from "pay to play" practices in the municipal securities market. The proposal is a comprehensive scheme composed of several separated requirements affecting municipal securities dealers, including limitations on business activities triggered by political contributions, limitations on solicitation and coordination of political contributions, and dealer recordkeeping and disclosure.

A. Rule G–37—"Pay to Play" Restrictions

1. Business Disqualification Provision

Proposed rule G–37 will prohibit brokers, dealers and municipal securities dealers ("dealers") from engaging in municipal securities business with an issuer within two years after proscribed contributions made by (1) the dealer, (2) any municipal finance professional associated with the dealer, or (3) any political action committee ("PAC") controlled by the dealer or any such associated municipal finance professional, to an official of the issuer who can, directly or indirectly, influence the awarding of municipal securities business. "Municipal securities business" includes certain dealer activities such as the purchase of a primary offering of municipal securities from the issuer on other than a competitive bid basis (*i.e.* acting as a managing underwriter or as a syndicate member in negotiated underwritings), and acting as a financial advisor, consultant, placement agent, or negotiated remarketing agent.[41] The proposal defines an "official of an issuer" as any incumbent, candidate or successful candidate for elective office of the issuer, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a dealer for municipal securities business. This includes any issuer official, incumbent or candidate (or successful candidate) who has influence over the awarding of municipal securities business. "Contributions" include any gift, subscription, loan, advance, or deposit of money or anything of value made: (1) For the purpose of influencing any election of any official of a municipal securities issuer for federal, state,[42] or local office; (2) for payment or reduction of debt incurred in connection with any election; or (3) for transition or inaugural expenses incurred by the successful candidate for state or local office.

Thus, contributions to certain state-wide executive or legislative officials will affect the eligibility of the firm to engage in municipal securities business.[43] The proposal applies to contributions made on or after April 25, 1994.[44]

The proposal's disqualification provision also would be triggered by contributions from employees of dealers, defined as "municipal finance professionals," are primarily engaged in municipal securities business. The proposal exempts contributions made by municipal finance professionals of $250 or less per election to each official for whom the individual is entitled to vote. The proposal defines the term "municipal finance professional" to mean:

(1) Any associated person primarily engaged in municipal securities representative activities, as defined in rule G–3(a)(i);[45]

(2) Any associated person who solicits municipal securities business;

(3) Any direct supervisor of such persons up through and including, in the case of a dealer other than a bank dealer, the chief executive officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G–1(a); or

(4) Any member of the dealer executive or management committee or similarly situated officials, if any (or, in the case of a bank dealer, similarly situated officials in the separately identifiable department or division of the bank, as defined in rule G–1).[46]

Family members are not specifically included within the definition of municipal finance professional. The proposal, however, prohibits a dealer and any municipal finance professional from doing any act indirectly which would result in a violation of the proposed rule if done directly by the dealer or municipal finance professional. This is intended to prevent dealers from funnelling funds or payments through other persons or entities to circumvent the proposal's requirements. For example, a dealer would violate the proposal if it does business with an issuer after contributions were made to an issuer official from or by associated persons, family members of associated persons, consultants, lobbyists, attorneys, other dealer affiliates, their employees or PACs, or other persons or entities as a means to circumvent the rule. A dealer also would violate the rule by doing business with an issuer after providing money to any person or entity when the dealer knows that the money will be given to an official of an issuer who could not receive the contribution directly from the dealer without triggering the rule's prohibition on business.

Association of Counties, for example, called for its members to boycott seventeen securities firms that have voluntarily banned political contributions citing these firms' endorsement of "public policy damaging rules." See "Politicians are Mobilizing to Derail Ban on Muni Underwriters' Campaign Gifts," *The Wall Street Journal*, (December 27, 1993), at C16.

[41] The proposed rule does not apply to competitive bids, *i.e.*, offerings in which the securities are awarded to the underwriting syndicate presenting the best bid according to stipulated criteria set forth in the notice of sale. See *Glossary of Municipal Terms*, *supra* note 11. Obviously, there is potential for abuse in determining the criteria by which eligibility is determined. If such abuse occurs, we would expect the MSRB to respond appropriately.

[42] The term "state" is defined in section 3(a)(16) of the Act to mean any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

[43] For example, governors will be included under the proposal's definition of official of an issuer.

[44] File No. SR–MSRB–94–2, Amendment No. 1 (March 29, 1994). See *supra* note 4.

[45] Rule G–3(a)(i) defines the term "municipal securities representative" as a person associated with a dealer, other than a person whose functions are solely clerical or ministerial, whose activities include one or more of the following: (A) Underwriting, trading or sales of municipal securities; (B) financial advisory or consultant services for issuers in connection with the issuance of municipal securities; (C) research or investment advice with respect to municipal securities; or (D) any other activities which involve communication, directly or indirectly, with public investors in municipal securities; provided, however, that the activities enumerated in subparagraphs (C) and (D) are limited to such activities as they relate to the activities enumerated in subparagraphs (A) and (B).

[46] The proposal's prohibition on business would result if a municipal finance professional associated with the dealer made the contribution before becoming associated with the dealer, (the two year ban on business applies to both the current and prior employer of the municipal finance professional).

The proposal will not restrict personal volunteer work by municipal finance professionals in political campaigns other than soliciting or coordinating contributions. However, if resources of the dealer are used or expenses are incurred by the municipal finance professional in personal volunteer work, the value of the resources or expenses must be included in determining whether the dealer is restricted from future negotiated underwritings involving that issuer or whether the municipal finance professional exceeded the $250 limitation.

2. Solicitation Restriction

The proposal also will prohibit dealers from soliciting contributions on behalf of officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business.[47] This will prevent dealers from engaging in municipal securities business with issuers if they engage in any kind of fund-raising activities for officials of the issuers that may influence the underwriter selection process. This prohibition on solicitation and coordination also applies to municipal finance professionals. The proposal prohibits municipal finance professionals from soliciting contributions to an official of an issuer with which the dealer engages or is seeking to engage in municipal securities business and from coordinating contributions.

B. Disclosure and Recordkeeping

The proposal would establish disclosure and recordkeeping requirements to facilitate enforcement of rule G–37's "pay to play" restrictions and, independently, to function as a public disclosure mechanism to enhance the integrity of and public confidence in municipal securities underwritings. Thus, although the disclosure and recordkeeping provisions will generally supplement the "pay to play" restrictions, the purposes served by these provisions are distinct from, and not dependent on, the business disqualification or solicitation restriction provisions.

1. Rule G–37

Proposed rule G–37 will require dealers to disclose to the MSRB on Form G–37 certain information about political contributions, as well as other summary information, to facilitate public scrutiny of political contributions in the context of the municipal securities business of a dealer. Contributions to be reported include those to officials of issuers and political parties of states and political subdivisions made by the dealer, any municipal finance professional, any executive officer, and any PAC controlled by the dealer or by any municipal finance professional.[48] Only contributions over $250 by municipal finance professionals and executive officers are required to be disclosed. The proposal does not require dealers to disclose the names of individual municipal finance professionals and executive officers.

The proposal requires that dealers report on Form G–37 by state: (1) The name and title, (including any city/county/state or other political subdivision) of each official of an issuer and political party receiving contributions; (2) the total number and dollar amount of contributions made by the dealer, dealer controlled PACs, and associated municipal finance professionals, and (3) other identifying information as required by Form G–37. Dealers also will be required to disclose issuers with which the dealer has engaged in municipal securities business during the reporting period, along with the type of municipal securities business and the name, company, role and compensation arrangement of any person employed by the dealer to obtain or retain municipal securities business from the issuers. The reports are required to be made on Form G–37 and to be submitted to the MSRB in accordance with rule G–37 filing procedures, quarterly, by dates determined by the MSRB.

The MSRB will include information reported on Form G–37 in its electronic library system, the Municipal Securities Information Library ("MSIL"). The MSRB will develop appropriate filing procedures to allow for public access to the information, as well as indexing, and record storage.

2. Rules G–8 and G–9

The proposal will amend rules G–8 and G–9 on recordkeeping and record retention regarding political contributions. The proposed amendment to rule G–8 will require a dealer to maintain a list of: (1) Names, titles, city/county and state of residence of all associated municipal finance professionals; (2) names, titles, city/county and state of residence of all executive officers of the dealer; (3) the states in which the dealer is engaging or is seeking to engage in municipal securities business; (4) every issuer with which municipal securities business has been conducted during the current year, as well as the previous two years and, where applicable, the name, company, role and compensation arrangement of any person employed by the dealer to obtain or retain municipal securities business with the issuer; and (5) all contributions, direct or indirect, to officials of issuers and to political parties of states and political subdivisions made by the dealer, each dealer-controlled PAC, and each associated municipal finance professional and executive officer.[49] The records required pursuant to the proposal apply to contributions made or business engaged in beginning April 25, 1994.[50]

The proposal does not require the dealer to maintain a list of contributions by its municipal finance professionals or executive officers that are made: (1) To officials for whom the person is entitled to vote, provided such contributions do not exceed $250 to each issuer official, per election; or (2) to political parties for the state and political subdivision in which the person is entitled to vote, provided the contributions do not exceed $250 per party, per year. The proposal also does not require dealers to maintain a list of contributions by any other employees, affiliate companies and their employees, spouses of covered employees, or any other person or entity unless the contributions were directed by persons or entities subject to proposed rule G–37.

The proposed amendment to rule G–9 requires dealers to maintain, for a six-year period, those records required to be made pursuant to the proposed amendment to rule G–8.

IV. Summary of Comments

The Commission received 69 comment letters on the proposal. A separate summary of comments was prepared and is available in the public file. The Discussion section of this order addresses specific issues addressed by the commentators.

V. Discussion

The MSRB's rule proposal seeks to end "pay to play" abuses in municipal securities underwritings. The MSRB has

[47] The term "seeking to engage in municipal securities business" means dealer activities including responding to requests for proposals, making presentations of public finance capabilities, and other soliciting of business with issuer officials.

[48] The proposal does not require dealers to maintain a list of contributions by other employees, affiliated companies and their employees, spouses of municipal finance professionals, or any other person or entity unless the contributions were directed by persons or entities subject to the proposal.

[49] Dealers will be required to record, per contribution, the identity of the contributor and the recipient and the amount of the contribution.

[50] File No. SR–MSRB–94–2, Amendment No. 1 (March 29, 1994). See *supra* note 4.

determined that the most effective means of accomplishing this goal is through adoption of several provisions consisting, as described above, of a business disqualification provision, a solicitation restriction and disclosure and recordkeeping requirements. These provisions reflect well-established methods for dealing with conflicts of interest and other instances where improper influence is used to secure an unmerited benefit.

The Commission believes that the MSRB's proposal is tailored to accomplish its stated goals with minimal disruption in the municipal securities industry and the state and local political process to which that industry is linked. The Commission agrees with the MSRB that its proposal represents an appropriate response to a compelling problem and, therefore, has determined to approve the proposed rule change.

A. Statutory Standard

The proposed rule change is consistent with the requirements of the Act, and in particular, with sections 15B(b)(2) (C) and (G) of the Act.[51] Section 15B(b)(2)(C) authorizes the MSRB to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest. Section 15B(b)(2)(G) authorizes the MSRB to adopt rules that prescribe the records to be made and kept by municipal securities dealers and the periods for which such records shall be preserved. Because the MSRB's rules are to be preventive in nature, Section 15B defines the scope of the MSRB's authority in terms of purposes rather than subject matters. This authority provides the MSRB with flexibility to deal with future problems in the municipal securities industry.[52] Thus, Section 15B provides the MSRB broad rulemaking authority to implement its enumerated purposes.

1. Prevent Fraudulent and Manipulative Acts and Practices

The Commission and the MSRB have a significant interest in preventing fraudulent and manipulative acts and practices, as well as the appearance of fraud and manipulation, in the municipal securities market. One of the principal goals of Section 15B is to address threats to the integrity of the municipal securities market.[53] Underwriters perform essential functions in offerings by structuring the offering and preparing disclosure documents that form the basis of marketing the offering to the public.[54] If underwriter selection is swayed by political contributions or influence, underwriters may be chosen based on their history of contributions or political contacts, rather than their expertise or competence.

Several commentators contend that reports of abuse are unsubstantiated,[55] or view the issue as one of voter confidence and campaign reform, rather than investor protection.[56] The Commission believes, however, that "pay to play" practices may damage the municipal securities market in several ways. If political influence is the determinative factor in the choice of municipal securities dealers as underwriters in an offering, the underwriter selected may be less likely or competent to perform a reasonable investigation of statements made by the issuer in connection with the offering.[57] A decrease in the credit quality of the issue after it has been sold could have a significant adverse impact on investors, and the underwriter's investigation might reveal information that bears directly on the issuer's future ability to meet interest and principal payment obligations on a timely basis.

"Pay to play" also undermines the integrity of municipal securities underwriting. The mere perception of political influence in underwriter selection diminishes investor confidence in an underwriter's willingness to faithfully fulfill its obligations to the investing public. The Statement of Initiative itself attests to the prevalence of industry concerns regarding the effects of these practices on the integrity of the municipal securities market and underwriters.

The perception of conflicts of interest is also damaging to investor confidence. Although some commentators suggest that investor confidence has not been affected by "pay to play" practices,[58] the Commission, relying on its own expertise as well as the judgment of the MSRB, believes that the widespread reports of abuse adversely affect investor confidence, and that the MSRB's proposal will help to strengthen the integrity of the underwriting process

[51] Sections 15B(b)(2) (C), (G); [15 U.S.C. §§ 78o–4(b)(2) (C), (G)].

[52] The legislative history to the 1975 Acts Amendments adopting Section 15B indicated that Congress did not believe it would be desirable to restrict the MSRB's authority by a specific enumeration of subject matters. "The ingenuity of the financial community and the impossibility of anticipating all future circumstances are obvious reasons for allowing the [MSRB] a measure of flexibility in laying down the rules of the municipal securities industry." S. Rep. No. 75, *Securities Exchange Act of 1975: Report of the Committee on Banking, Housing, and Urban Affairs, to Accompany S. 249*, 94 Cong., 2d Sess 43 ("Senate Report") at 225.

[53] "S. 249 would provide, through amendment of the Exchange Act, a comprehensive pattern for the regulation of brokers, dealers, and banks trading municipal securities. The Committee feels that the lack of federal regulation . . . represents a serious threat to the integrity of the capital-raising system upon which local governments rely to finance their efforts." *Senate Report* at 215, 16.

[54] In the proposing and adopting releases for Rule 15c2–12, the Commission set forth its interpretation of the obligation of municipal securities underwriters under the antifraud provisions of the federal securities laws. The interpretation discussed the duty of underwriters to the investing public to have a reasonable basis for recommending any municipal securities, and their responsibility, in fulfilling that obligation, to review in a professional manner the accuracy of statements made in connection with the offering. Securities Exchange Act Release No. 26100 (September 28, 1988), 53 FR 37778; Securities Exchange Act Release No. 26985 (July 10, 1989), 54 FR 28799.

[55] For example, one commentator states that "there have been relatively few reported instances of improper behavior in the market where approximately 15,000 issues are sold each year involving thousands of public officials * * *. Many of the high-profile cases of improper behavior that have been cited as evidence of corrupt practices caused by campaign giving are either illegal already or would not be affected by a prohibition on political contributions." Letter from Jeffrey L. Esser, Executive Director, Government Finance Officers Association, to Jonathan Katz, Secretary, Commission (March 10, 1994). See also letter from Donald J. Borut, Executive Director, National League of Cities, to Jonathan Katz, Secretary, Commission (February 7, 1994); letter from Harlan E. Boyles, State Treasurer, North Carolina, to Arthur Levitt, Chairman, Commission (January 28, 1994).

Several commentators state that the majority of political contributions by municipal securities dealers and their associated persons are given for legitimate purposes and are unrelated to the selection of municipal securities underwriters. *E.g.*, letter from Jeffrey L. Esser, Executive Director, Government Finance Officers Association, to Jonathan Katz, Secretary, Commission (March 10, 1994).

[56] *E.g.*, letter from Jeffrey L. Esser, Executive Director, Government Finance Officers Association, to Jonathan Katz, Secretary, Commission, (March 10, 1994). The Government Finance Officers Association "believes that any improper relationship is properly a voter, taxpayer and ratepayer concern because of the potential impact such a relationship could have on the cost of the financing."

[57] See *supra* note 54.

[58] One commentator states that "[t]o my knowledge the practice of campaign contributions made by participants of the municipal securities industry has not resulted in bond defaults or other value losses that directly affect individual investors. Even the most egregious abuses documented in the national press have not resulted in investor losses in either primary offerings or in the secondary markets." Letter from Kenneth L. Rust, Debt Manager, Mayor, City of Portland, Oregon, to Jonathan Katz, Secretary, Commission (February 28, 1994).

and will help to restore and maintain investor confidence.[59]

2. Perfect the Mechanism of a Free and Open Market

As discussed above, several reports have indicated that "pay to play" practices are considered by many municipal securities underwriters to be an ordinary cost of doing business. Because of great competitive pressures to obtain business, municipal securities firms and the offering process are susceptible to abusive political contribution practices. "Pay to play" practices raise artificial barriers to competition for those firms that either cannot afford or decide not to make political contributions. Moreover, if "pay to play" is the determining factor in the selection of an underwriting syndicate, an official may not necessarily hire the most qualified underwriter for the issue. The proposal makes clear to municipal securities dealers and to officials of issuers that "pay to play" practices should no longer be employed to obtain municipal securities business. The proposal will further merit-based competition between municipal securities dealers and, thus, will remove impediments to and perfect the mechanism of a free and open market for municipal securities.

3. Promote Just and Equitable Principles of Trade

The proposal will promote just and equitable principles of trade. One of the primary principles of section 15B is to raise the level of conduct in the municipal securities industry.[60] "Pay to play" practices undermine these principles since underwriters working on a particular issuance may be assigned similar roles, and take on equivalent risks, but be given different allocations of bonds to sell—resulting in differing profits—based on their political contributions or contacts. The MSRB, under the Commission's supervision, was given primary rulemaking authority to regulate the conduct of municipal securities dealers by adopting rules to promote just an equitable principles of trade. In particular, the MSRB is obligated to assure that municipal securities dealers observe high professional standards in their activities with the public. The Statement of Initiative demonstrates the significance with which municipal securities dealers address reports of abuse in the municipal securities market. The proposal will extend the goals of the Statement of Initiative to all municipal securities dealers attempting to obtain municipal securities business.

4. Foster Cooperation and Coordination in Regulating Municipal Securities Transactions

The proposal will foster cooperation and coordination with persons engaged in regulating transactions in municipal securities. The proposal's disclosure and recordkeeping requirements will aid the Commission, the MSRB, and the NASD to oversee enforcement of and dealer compliance with the proposal.

5. Records and Record Retention

The proposal's record and record retention requirements are consistent with section 15B(b)(2)(G) of the Act which authorizes the MSRB to adopt rules that prescribe the records to be made and kept by municipal securities dealers and the periods for which such records shall be preserved. As discussed above, the proposal's record and record retention requirements, along with its prohibitions on municipal securities business, are designed to prevent "pay to play" practices in the awarding of municipal securities business.

B. First Amendment Guarantee of Free Speech

Several commentators believe that the proposal's prohibitions on political contributions impermissibly infringe on the First Amendment guarantees of freedom of speech and association,[61] and constitutional guarantees of equal protection.[62] These commentators believe that although municipal bond business should not be a "pay back" for political contributions, the proposal restricts the ability of municipal securities underwriters and their employees to demonstrate support for state and local officials.[63]

In light of the Commission's approval and enforcement of MSRB's rules, the Commission is sensitive to and has carefully considered these constitutional concerns in reviewing the proposed rule change.[64] The Commission acknowledges that the business disqualification provision may affect the propensity of municipal securities underwriters to make political contributions. Although political contributions involve both speech and associational rights protected by the First Amendment, a "limitation on the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication."[65] Even a significant interference with rights protected by the

[59] Because, as discussed herein, regulation of political contributions by municipal securities dealers and municipal securities professionals is intended to enhance the fairness and efficiency of the municipal securities market, it is directly related to the purposes of the Act. Some commentators raise objections to the proposal on federalism grounds. *E.g.*, letter from David Norcross, General Counsel, Republican National Committee to Jonathan Katz, Secretary, Commission (March 11, 1994). Although the MSRB's proposal will have some effect on political fundraising activities of candidates for certain state and local offices, these effects do not transgress any limits on federal authority over state political activities. The MSRB's rules are directed at municipal securities dealers and municipal finance professionals and do not regulate the conduct of state officials. *Cf. New York* v. *United States*, 112 S. Ct. 2408 (1992). As such, the proposed rule change falls within the legitimate scope of the MSRB's congressionally-mandated jurisdiction regarding the conduct of municipal securities participants, notwithstanding any incidental effects on state elections.

[60] See *Senate Report* at 224, 25. Because the MSRB is an SRO for municipal securities dealers, it is an appropriate body to establish just and equitable principles of trade.

[61] One commentator, for example, states that "it is an infringement on individual first amendment rights to prohibit any person's financial support of a candidate because it is 'presumed' the contributor is involved in some 'pay to play' scheme." Letter from Michael E. Arrington, Chairman, Bi-County Sub-Committee, Maryland House of Delegates, to Arthur Levitt, Chairman, Commission (December 22, 1993). See *e.g.* letter from Jeffrey L. Esser, Executive Director, Government Finance Officers Association, to Jonathan Katz, Secretary, Commission (March 10, 1994); letter from Marshall Bennett, President, and Bob Holden, Ethics Task Force, National Association of State Treasurers, to Jonathan Katz, Secretary, Commission (March 11, 1994); letter from David Norcross, General Counsel, Republican National Committee to Jonathan Katz, Secretary, Commission (March 11, 1994).

[62] One commentator, for example, states that "Rule G–37 fails to treat similarly-situated individuals in a like manner by classifying municipal broker-dealers and municipal finance professionals as the only persons subject to the burdens of the rule while other similarly situated persons, such as consultants and non-registered municipal finance professionals, are not subject to the same burden." Letter from Raymond J. McClendon, Vice-Chairman and Chief Operating Officer, Pryor, McClendon, Counts & Co., Inc., to Margaret H. McFarland, Deputy Secretary, Commission (March 9, 1994).

[63] See *e.g.* letter from Donald J. Borut, Executive Director, National League of Cities, to Jonathan Katz, Secretary, Commission (February 7, 1994); letter from Michael E. Arrington, Chairman, Bi-County Sub-Committee, Maryland House of Delegates, to Arthur Levitt, Chairman, Commission (December 22, 1993); letter from Raymond J. McClendon, Vice-Chairman and Chief Operating Officer, Pryor, McClendon, Counts & Co., Inc., to Margaret H. McFarland, Deputy Secretary, Commission (March 9, 1994).

[64] Several commentators disagree with the MSRB's conclusion that it is not a state actor for purposes of constitutional protections. See letter from William H. Ellis, President and Chief Operating Officer, Piper Jaffray Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994); letter from Marshall Bennett, President, and Bob Holden, Ethics Task Force, National Association of State Treasurers, to Jonathan Katz, Secretary, Commission (March 11, 1994); letter from Raymond J. McClendon, Vice-Chairman and Chief Operating Officer, Pryor, McClendon, Counts & Co., Inc., to Margaret H. McFarland, Deputy Secretary, Commission (March 9, 1994).

[65] *Buckley* v. *Valeo*. 424 U.S. 1, 20 (1976).

First Amendment may be justified by a sufficiently compelling government interest so long as the interference is closely drawn to avoid unnecessary abridgment of those protected rights.[66]

Prevention of fraud and manipulation and the appearance of fraud and manipulation are compelling government interests. The MSRB's proposal is in the context of a closely regulated industry and is directly relevant to the concerns of the regulatory scheme. The MSRB's interests in seeking approval of the proposed rule change—the eradication of "pay to play" practices and other *quid pro quo* arrangements—are precisely the kind of interests which have been deemed sufficiently compelling to justify restrictions on political contributions.[67] As discussed above, "pay to play" arrangements can have detrimental effects on the municipal securities markets; the widespread perception that these practices are commonplace undermines the integrity of the market and diminishes investor confidence. Moreover, the restrictions inherent in the MSRB's proposed rule change are in the nature of conflict of interest limitations which are particularly appropriate in cases of government contracting and highly regulated industries. Unlike general campaign financing restrictions, such as certain provisions of the Federal Election Campaign Act, which seek to combat unspecified forms of undue influence and political corruption, conflict of interest provisions, such as the MSRB's proposal, are tied to a contributor's business relationship with governmental entities and are intended to prevent fraud and manipulation.[68]

As previously noted, the Commission believes that the MSRB's proposed rule change is closely tailored to accomplish its goal of preventing fraudulent and manipulative acts and practices that stem from *quid pro quo* arrangements and minimizes any undue burdens on the protected speech and associational rights of municipal securities dealers and municipal finance professionals. The proposed rule change is narrowly crafted in terms of the conduct it prohibits, the persons who are subject to the restriction, and the circumstances in which it is triggered.

The proposal is limited to contributions to officials of municipal issuers who can influence the hiring of a dealer in connection with negotiated offerings. The restrictions are triggered only in situations where a business relationship exists or will be established in the near future between the municipal securities dealer and a municipal issuer. Most employees and affiliates of dealers are not covered by the proposal, and the dealer's municipal finance professionals will be able to avail themselves of a personal contribution exception of up to $250, individually, with respect to officials for whom they are eligible to vote. The proposal does not restrict uncoordinated independent expenditures in support of candidates or political views. Moreover, because the contribution limitations take the form of a business disqualification, the proposal does not flatly prohibit individuals from making, or prevent candidates from receiving contributions. In addition, the proposal does not, as some commentators suggest, restrict the ability of municipal securities underwriters and their employees to demonstrate support for state and local officials. Underwriters and their employees may continue to contribute in other ways in political campaigns that do not involve soliciting or coordinating contributions.[69]

The Commission believes that the proposed rule change is a necessary and appropriate measure to prevent fraudulent and manipulative acts and practices and the appearance of fraud and manipulation in the municipal securities market by eliminating "Pay to play" arranged underwritings. The proposal represents a balanced response to allegations of corruption in the municipal securities market; it provides specific prohibitions to help ensure that underwriter selection is based on expertise, not on the amount of money given to a particular candidate for office.

C. Municipal Securities Dealers: Small Firms and Minority and Women Owned Firms

Several commentators believe that the proposal will disadvantage small, regional municipal securities firms and firms owned by minorities or women.[70] Because larger firms may have more employees that may be eligible to use the *de minimis* exemption, these commentators believe that the proposal will provide larger firms an unfair advantage.[71]

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[66] *Id.* at 25.

[67] For example, Florida's Division of Bond Finance prohibits the awarding of municipal securities business to firms that make political contributions to the governor or to cabinet members. Florida State Board of Administration, Rule 19A–6.004. Florida also prohibits investment and law firms and their officers, directors, and employees that make contributions or engage in fundraising for state-level candidates from competing for business from the Florida Housing Finance Agency. Rules of the Florida Housing Finance Authority (1991). Several states prohibit contributions from corporations and regulated industries in state elections including Arizona, Ariz. Rev. Stat. Ann. § 16–919; Connecticut, Conn. Gen. Stat. Ann. § 9–333o(a); North Dakota, N.D. Cent. Code §§ 16.1–08–02(1), 16.1–08–01(10); Pennsylvania, Penn. Stat. Ann. tit. 25, § 3253; South Dakota, S.D. Codified Laws Ann. § 12–25–2; West Virginia, W. Va. Code § 3–8–8; Wisconsin, Wis. Stat. Ann. § 11.38; and Wyoming, Wyo. Stat. § 22–25–102.

[68] *Compare* 2 U.S.C. 441(a), (b) (general contribution restrictions in federal campaigns applicable to individuals, corporations and labor unions) with 2 U.S.C. § 441(c) (prohibition on contributions by federal contractors). Similarly, the prohibitions on solicitation and coordination of campaign contributions are justified by the same overriding purposes which support the business disqualification provisions. The provisions are intended to prevent circumvention of the disqualification provisions in cases where a dealer has or is seeking to establish a business relationship with a municipal issuer. Absent these restrictions, solicitation and coordination of contributions could be used as effectively as political contributions to distort the underwriter selection process. The solicitation and coordination restriction relate only to fundraising activities and would not prevent dealers and municipal finance professionals from expressing support for candidates in other ways.

[69] A number of states separately limit individual contributions in state elections including, for example: Arizona $640 per state wide candidate, $250 per other offices, and a maximum of $2,000 in total contribution per calendar year, Ariz. Rev. Stat. Ann. § 16–905; Florida, $500 per candidate, Flor. Stat. Ann. § 106.08; and Montana, $1,500 collectively to candidates for governor and lieutenant governor, $750 to candidates for state office in a statewide election, $400 to candidates for public service commissioner, district court judge, or state senator, $250 to a candidate for any other public office, Mont. Code Ann. §§ 13–1–101, 13–37–216.

[70] See *e.g.*, letter from Timothy L. Firestine, Director of Finance, Montgomery County Government, to Jonathan Katz, Secretary, Commission (February 24, 1994); letter from Stan W. Helgerson, Finance Director, Village of Carol Stream, Illinois, to Jonathan Katz, Secretary, Commission (March 10, 1994); letter from Jeffrey L. Esser, Executive Director, Government Finance Officers Association, to Jonathan Katz, Secretary, Commission (March 10, 1994); letter from Carolie R. Smith, President, Smith Mitchell Investment Group, Inc., to Jonathan Katz, Secretary, Commission (March 9, 1994).

[71] One commentator, for example, states that "larger firms with multiple departments including those not devoted to public finance will be able to support candidates through contributions made by corporate or other specialists who are not affected by this rule. Minority- and women-owned firms typically are small speciality public finance firms so their employees would be barred from supporting candidates." Letter from Jeffrey L. Esser, Executive Director, Government Finance Officers Association, to Jonathan Katz, Secretary, Commission (March 10, 1994).

Another commentator recommends that the proposal should extend the *de minimis* exemption to officials for whom the municipal securities finance professionals are not entitled to vote to allow "continuing access to clients and [enable] us to exercise our constitutional and political rights." Letter from Carolie R. Smith, President, Smith Mitchell Investment Group, Inc., to Jonathan Katz, Secretary, Commission (March 9, 1994). Another commentator recommends that the proposal exclude small issues (*e.g* $10,000,000 par value or less) to lessen the impact of the rule on small regional, minority-owned, and women-owned firms. Letter from Raymond J. McClendon, Vice-Chairman and Chief Operating Officer, Pryor, McClendon, Counts & Co., Inc., to Margaret H.

The Commission believes that the proposal will not have a disproportionate effect on minority or women-owned firms or on small and regional firms. The proposal clearly does not prevent local and state officials from selecting minority or women-owned municipal securities dealers for participation in municipal securities issuances.[72] Moreover, the proposal will apply equally to all municipal securities dealers seeking to obtain municipal securities underwriting business. The Commission is not aware of any evidence indicating that the proposed rule change will disproportionately affect minority or women-owned firms, or smaller and regional firms vis-a-vis large dealers. The Commission rejects the notion that campaign contributions are a unique and essential business development mechanism for small, regional, or minority and women-owned firms. As a practical matter, the proposal leaves open all legitimate marketing practices which firms, both large and small, may use to gain underwriting business such as sales presentations, seminars, and marketing documents. Moreover, the Commission believes that the costs of incidental, unintended effects, if any, are far outweighed by the benefits of restricting "pay to play" practices.

D. Effect on Women and Minority Candidates

Some commentators suggest that the proposal will adversely affect women and minority candidates for state and local office, or will inhibit the ability of municipal securities professionals to volunteer for public service.[73] The basis for this contention is uncertain, but the proposal is clearly not intended to affect any particular candidate or identifiable group of candidates in an adverse manner. As noted before, the restrictions relate only to those situations where contributions are directed to an official of a municipal issuer with which a dealer might do business. It does not prevent other forms of indirect financial support for a candidate, such as contributions to political action committees that are not controlled by the dealer or its municipal finance professionals, or independent expenditures.[74]

E. Candidates for Federal Office

Several commentators also suggest that the proposal should apply to contributions made to officials of or candidates for federal office.[75] Several commentators raise concerns that the proposal will restrict contributions to state and local officials running for federal office, without a similar limitation on contributions to the incumbent federal office holder.[76]

The Commission believes that it is not necessary to extend the proposal to include contributions to candidates for federal office. The proposal addresses abusive political contributions to officials of issuers who may influence the selection of municipal securities underwriters. Because federal office holders do not influence the underwriter selection process, the Commission believes that it would not be appropriate to include federal candidates under the rule's requirements.

By the same token, the Commission also believes that any resulting hardship to candidates for federal office who are currently local officials is not a reason for eliminating these requirements. The MSRB cannot overlook potential conflicts of interest solely because there are candidates for the same federal office who do not face the same conflicts. In any event, the resulting burden to current local officials does not appear to be significant. Generally, municipal underwriters play a less significant role as contributors in federal elections. Moreover, under federal law there exist general contribution restrictions that limit the amount of contributions that other candidates are able to obtain from municipal securities dealers and municipal finance professionals.[77]

F. Municipal Securities Dealer Affiliates

Several commentators believe that the proposal should apply to contributions from all employees affiliated with the underwriter and from affiliated financial institutions and their employees.[78] Several commentators specifically express concern that the proposal excludes contributions by chief executive officers of banks,[79] or by PACs controlled by banks or bank holding companies, which have a municipal securities dealer department

McFarland, Deputy Secretary, Commission (March 9, 1994).

[72] The Commission believes that promoting minority and women-owned firms is a valid goal. Other means exist to promote this goal. For example, the Commission understands that some issuers require the underwriting syndicate to include one or more minority or women-owned firms.

[73] "Many such candidates either lack substantial personal resources and/or live in districts with limited resources. It is essential, therefor, that such candidates be able to solicit broad support from outside sources." Letter from Marshall Bennett, President, and Bob Holden, Ethics Task Force, National Association of State Treasurers, to Jonathan Katz, Secretary, Commission (March 11, 1994).

[74] The proposal will not prevent contributions to "special-interest" PACs that are not controlled by the dealer or municipal finance professional unless the special interest PAC solicits contributions for the purpose of supporting an identifiable candidate. Thus, the proposal will have no effect on the ability of market participants to support candidates who represent their ideological, political, or social interests, or on the ability to volunteer for public service, notwithstanding concerns expressed by some commentators to the contrary. Letter from Robin L. Wiessmann, Principal, Artemis Capital Group, Inc., to Arthur Levitt, Chairman, Commission (December 21, 1993).

[75] *E.g.* letter from Jeffrey L. Esser, Executive Director, Government Finance Officers Association, to Jonathan Katz, Secretary, Commission (March 10, 1994). One commentator objected to the proposal on the grounds that, with respect to municipal officials who are candidates for federal office, the MSRB's authority to adopt rules, subject to Commission approval, regulating campaign contributions of dealers and their employees conflicts with the jurisdiction of the Federal Election Commission ("FEC") under the regulatory scheme established in the Federal Election Campaign Act ("FECA"). Letter from David Norcross, General Counsel, Republican National Committee, to Jonathan Katz, Secretary, Commission (March 11, 1994). Although FECA confers exclusive jurisdiction for enforcing the provisions of FECA, the MSRB rules would not affect, directly or indirectly, the provisions of FECA or their enforcement. Rather, as discussed above, the MSRB's proposal is specifically tailored to eliminate conflicts of interest arising from political contributions and similar activities in selecting underwriters in connection with negotiated offerings of municipal securities.

[76] One comment letter, representing state and local officials, states: "While our organizations recognize the importance of maintaining the integrity of the municipal bond market, we are greatly concerned that the proposed rule is inherently unfair in its limited application to only state and local officials. We fail to understand why this proposed action by the Securities and Exchange Commission is not coupled with a comprehensive limitation on contributions to the federal branch of government, which has perhaps the greatest influence over the strength of the municipal bond market and investor confidence in that market."

Letter from Jerry Abramson, President, The United States Conference of Mayors, Sharpe James, President, The National League of Cities, Barbara Sheen Todd, President, The National Association of Counties, and Bonnie R. Kraft, President-Elect, the Government Finance Officers Association, to Arthur Levitt, Chairman Commission (February 18, 1994).

[77] See *supra* note 68.

[78] One commentator, for example, believes that the "rule is ineffective because it does not cover all related personnel who can continue to contribute to officials of issuers thereby creating the actual or apparent conflict of interest which the MSRB rule seeks to prevent." Letter from Raymond J. McClendon, Vice-Chairman and Chief Operating Officer, Pryor, McClendon, Counts & Co., Inc., to Margaret H. McFarland, Deputy Secretary, Commission (March 9, 1994).

[79] Once commentator, for example, states that "[w]e strenuously object to a narrowly-based requirement that diminishes the ability of our Chief Executive and members of our executive committees to participate as community leaders, to engage in political dialogue and to develop our firm's profile in the communities in which we do business to the same extent as local bank chief executives." Letter from William H. Ellis, President and Chief Operating Officer, Piper Jaffray Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994).

or subsidiary.[80] These commentators believe that by exempting affiliated banks and bank holding companies, the proposal provides a "loophole" for continued abuse of political contributions by municipal securities dealers and their affiliates.[81]

The Commission believes that the MSRB's proposed rule change is not deficient merely because it does not include affiliated banks and bank holding companies. Because of the sensitivity to constitutional and other concerns, the Commission believes that the coverage of the proposal is no broader than is necessary to effectuate its purpose and that extending the scope to cover affiliated banks and bank holding companies is not necessary.[82]

G. De Minimis Exemption

Several commentators recommend that the proposal increase the *de minimis* amount that municipal finance professionals may contribute.[83] Several commentators recommend that the rule should provide a "good faith" exemption for inadvertent violations.[84] One commentator recommends that the rule provide a "safe harbor" provision for certain contributions.[85] Another commentator believes that the proposal should exempt contributions made for legitimate purposes.[86]

Several commentators believe that the *de minimis* exemption should be expanded to include contributions to officials for whom the municipal finance professionals are not entitled to vote.[87] These commentators believe that the proposal prevents municipal securities dealers from establishing business relationships with issuers,[88] and from supporting candidates with similar views important to the municipal finance professional or to the municipal securities broker-dealer firm.[89] One commentator recommends that the proposal allow contributions to candidates that represent the area in which the professionals' principal office is located.[90]

The Commission believes that the MSRB's determinations as to the amount of the de minimis exemption and limiting its application to contributions to officials for whom the municipal finance professional is entitled to vote are appropriate and reasonable. As discussed, the proposal provides specific guidelines to prevent "pay to play" contributions. The proposal provides an appropriate balance between limiting "pay to play" practices and the ability of dealers and their employees to demonstrate support for state and local candidates. The proposal recognizes that certain contributions made for legitimate political purposes present less risk of a conflict of interest or the appearance of a conflict of interest. Although an individual may have a legitimate

[80] One commentator, for example, states that "[c]ommercial banks would be free to continue making PAC contributions to local and state level political candidates and in the process gain a significant competitive advantage in the selection process for public finance undertakings. Those candidates receiving bank PAC contributions would certainly remember such support when bank dealer personnel are introduced or accompanied by commercial bankers in the selection process. It is a typical procedure for the local bank officer to lobby and/or speak in behalf of the hiring of his public finance entity." Letter from Clifford A. Lanier, Jr., The Frazer Lanier Company, to David C. Clapp, Chairman, MSRB (March 1, 1994).

Another commentator states that "[i]t is unreasonable to believe that political candidates, including 'issuer officials,' will be able or need to, discern between contributions from a bank-controlled PAC and a bank's municipal securities 'dealer-controlled' PAC. This appears to us to represent 'business as usual' for bank-controlled municipal dealers while we are both stigmatized and potentially disadvantaged competitively." Letter from William H. Ellis, President and Chief Operating Officer, Piper Jaffray, Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994).

[81] "Unfortunately, the proposed rule as written is so severely deficient in ignoring the sophisticated realities of political fundraising undertaken by securities firms, that the loopholes and fine distinctions posed promise to provide a road map for more sinister activities, possibly making the situation worse." Letter from Mark D. Schwartz, to Arthur Levitt, Chairman, Commission (January 31, 1994).

Several commentators question the ability of the MSRB or the NASD to enforce Rule G–37. For example, one commentator believes that "[p]olitical favors will to those investment banks that flaunt or circumvent the rule while those firms who live by the rules will suffer accordingly." Letter from Carolie R. Smith, President, Smith Mitchell Investment Group, Inc., to Jonathan Katz, Secretary, Commission (March 9, 1994).

[82] The Commission will monitor closely the implementation of the proposal and its effects on the market, and if it determines that abusive practices continue to exist, will encourage the MSRB to expand the scope of the rule. In response to the suggestion that financial advisers be required to register as municipal securities broker-dealers and be subject to the proposal, the Commission notes that such a recommendation is beyond the scope of this proposal. See *e.g.*, letter from Vivian Altman, Altman & Co., to Jonathan Katz, Secretary, Commission (January 31, 1994).

[83] These commentators express concern that inadvertent violations by municipal securities dealers or associated persons covered by the rule may prevent dealers from participating in an underwriting, and, thus, raise the cost of a municipal securities issuance. For example, one commentator states that "we are concerned that your rule could deprive a state or local government of the opportunity to work with a company which may be offering the most desirable rates simply due to a technical infraction." Letter from Jerry Abramson, President, The United States Conference of Mayors, Sharpe James, President, The National League of Cities, Barbara Sheen Todd, President, The National Association of Counties, and Bonnie R. Kraft, President-Elect, the Government Finance Officers Association, to Arthur Levitt, Chairman, Commission (February 18, 1994).

[84] For example, one commentator states that "[c]learly, the tradition of broker-dealer regulation in the U.S. is based upon the requirement that securities firms have adequate policies and procedures in place to assure compliance with laws and regulations not that each broker-dealer be guarantor of perfect compliance." Letter from William H. Ellis, President and Chief Operating Officer, Piper Jaffray Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994). Another commentator believes that the proposal, "consistent with many other rules and regulations applicable to the securities industry, may achieve its purposes but temper its remedy for firms with adequate compliance procedures and supervision." Letter from D. Kelly, A.G. Edwards & Sons, Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994). *See also* letter from Raymond J. McClendon, Vice-Chairman and Chief Operating Officer, Pryor, McClendon, Counts & Co., Inc., to Margaret H. McFarland, Deputy Secretary, Commission (March 9, 1994); letter from George B. Pugh, Jr., Chairman, Municipal Securities Division, Public Securities Association to Jonathan Katz, Secretary, Commission (March 11, 1994).

Several commentators raise concerns that aggrieved employees may make contributions to deliberately prevent a firm from obtaining municipal securities business. *E.g.*, letter from William H. Ellis, President and Chief Operating Officer, Piper Jaffray Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994); letter from D. Kelly, A.G. Edwards & Sons, Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994).

[85] For example charitable contributions, contributions to non-partisan associations in which elected officials may be members or participants, support of ballot propositions, certain services in the normal course of business, contributions by spouses or household members, contributions to national political parties, contributions to state and local political parties and certain contributions to political action committees. Letter from D. Kelly, A.G. Edwards & Sons, Inc., to Jonathan Katz, Secretary Commission (March 10, 1994).

[86] Letter from Raymond J. McClendon, Vice-Chairman and Chief Operating Officer, Pryor, McClendon, Counts and Co., Inc., to Margaret H. McFarland, Deputy Secretary, Commission (March 9, 1994).

[87] For example, one commentator believes that "[d]ealers should not be prohibited from making contributions to persons for whom they are unable to vote. They should have a right to support the candidates of their choice." Letter from Jeffrey L. Esser, Executive Director, Government Finance Officers Association, to Jonathan Katz, Secretary Commission (March 10, 1994).

[88] Letter from Carolie R. Smith, President, Smith Mitchell Investment Group, Inc., to Jonathan Katz, Secretary Commission (March 9, 1994).

[89] For example, one commentator believes that "[t]he provision limiting contributions to one's voting jurisdiction denies municipal securities professionals access to politicians who influence their corporate and individual political interests. Specifically, municipal securities professionals will be denied the ability to support politicians who champion their personal beliefs or corporate concerns. For example, a firm headquartered in New York City whose president and employees live on Long Island would be unable to send a representative to a dinner for the mayor of New York City or for the mayor's political opponent. Yet the mayor's decisions on issues such as zoning, corporate taxes, and transportation policy significantly impact the company's viability." Letter from Carolie R. Smith, President, Smith Mitchell Investment Group, Inc., to Jonathan Katz, Secretary, Commission (March 9, 1994)

[90] Letter from Gerald E. Pelzer, President, Clayton Brown & Associates, Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994).

interest in making contributions to candidates for whom she is ineligible to vote, there is a greater risk in such circumstances that the contribution is motivated by an improper attempt to influence municipal officials. Thus, the proposal enables municipal finance professionals to contribute $250 per election to candidates for whom they are entitled to vote without triggering the proposal's business limitation. As discussed, the proposal does not prevent dealers or their employees from demonstrating support for local and state officials in other ways including volunteer political campaign activity.

H. General Provisions

Several commentators believe that the proposal is operationally too burdensome to implement. These commentators believe that because of the number and types of persons subject to the rule's prohibitions, it will be difficult for municipal securities dealers to implement and enforce compliance procedures.[91] Some commentators believe that the proposal's disclosure and recordkeeping requirements are overly burdensome.[92] Several commentators also believe that the scope of the proposal is uncertain and recommend that it provide more complete standards regarding employee contributions,[93] the use of consultants and law firms,[94] bonds issued by corporations with the assistance of local governments,[95] the definition of "election,"[96] and the definition of "official of such issuer."[97] One commentator requests that the proposal contain a "sunset" provision to require the MSRB to review rule G–37 after a fixed number of years.[98]

The Commission believes that the proposal's provisions are sufficiently specific to permit compliance with its terms. The Commission also understands that industry efforts are currently underway to draft proposed guidelines to assist dealer compliance with the proposal. In addition, the MSRB will provide continued interpretive guidance to assist dealer compliance with the proposal. The Commission, in accordance with its statutory mandate, will continue to monitor the implementation of the proposal and the effects the proposal may have on the market.

I. Amendment No. 1

The Commission finds good cause for approving the MSRB's Amendment No. 1, pursuant to Section 19(b)(2) of the Act, prior to the thirtieth day after the date of publication of notice of the amendment. As originally submitted, the proposal's prohibitions on municipal securities business would arise from contributions made on or after April 1, 1994. The MSRB filed the amendment to change the April 1, 1994 date to a date 10 days after publication in the **Federal Register** of the order approving the proposal. The MSRB also amended the proposal to change the effective date of the proposal's disclosure and recordkeeping requirements to a date 10 days after publication of the approval order in the **Federal Register**. Thus the proposal's prohibitions will arise from contributions made on or after April 25, 1994. The proposal's disclosure and recordkeeping requirements also will not be effective until April 25, 1994. The Commission believes that the amendments will facilitate compliance by municipal securities dealers. The amendments, in conjunction with the proposal's notice and comment period, will provide municipal securities dealers sufficient time to adopt and implement procedures to comply with the proposal.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the MSRB's Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the amendment that are filed with the Commission, and all written communications relating to the amendment 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. Copies of the amendment also will be

[91] For example, Piper Jaffray Inc. expresses concern regarding the ability of broker-dealer firms to screen newly hired employees or current employees seeking employment with the firm's municipal securities departments, and the ability to hire civil servants. Piper Jaffray Inc. believes that "[t]his would require firms to screen all applicants for these jobs by requiring them to declare to whom they made political contributions and make judgmental evaluations as to whether their earlier campaign activities would be potentially violative of the rule and not offer a job to any offending contributor." Piper Jaffray Inc. believes that this will almost certainly expose broker-dealer firms to the risk of civil litigation. Letter from William H. Ellis, President and Chief Operating Officer, Piper Jaffray Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994). Another commentator states that "a person who has made a contribution within the past two years apparently taints a firm which hires the individual even if the individual was not involved in the municipal securities business at the time of the contribution. Two serious problems exist. The first is that even a firm with strict reviews for hiring may find itself barred * * *. The second is that many active citizens will find themselves de facto barred from entering the public finance, banking and brokerage businesses." Letter from D. Kelly, A.G. Edwards & Sons, Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994).

[92] *E.g.*, letter from A.B. Krongard, Chief Executive Officer, Alex. Brown & Sons, to Jonathan Katz, Secretary, Commission (March 15, 1994); letter from Robert F. Price, Chairman, Federal Regulation Committee, Securities Industry Association, to Jonathan Katz, Secretary, Commission (March 17, 1994). The Securities Industry Association believes that the proposal's reporting provisions should be amended to: (1) Require quarterly submissions for only those quarters in which the dealer has any contributions to report; (2) delete the requirement to report lists of issuers with which the dealer conducts municipal securities business; and (3) delete the requirement to disclose the name, company, role, and compensation arrangement of any person employed by the dealer to obtain municipal securities business.

[93] For example, A.G. Edwards & Sons, Inc. believes that the "provision is ambiguous. Read most broadly the definition of municipal finance professional in proposed Rule G–37 could be construed to include any retail broker who sells municipal securities * * *. As a result of the possible ambiguity and the changing application, firms employing retail brokers likely will interpret the provision broadly to avoid being barred from the municipal finance business. The result will be that numerous brokers who have no participation in securing municipal securities business will be barred from political activities." Letter from D. Kelly, A.G. Edwards & Sons, Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994).

[94] *E.g.*, Letter from William H. Ellis, President and Chief Operating Officer, Piper Jaffray Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994). One commentator recommends the proposal clarify that the definition of municipal finance professional excludes independent law firms or persons retained by a dealer for purposes other than the solicitation of municipal securities business. Letter from Richard H. Martin, Attorney, Leonard, Street and Deinard, to Jonathan Katz, Secretary, Commission (March 8, 1994).

One commentator recommends that the proposal should be clarified to exclude from the definition of municipal finance professional any independent firms or persons retained by a broker-dealer for purposes other than the solicitation of municipal securities business. Letter from Richard H. Martin, Attorney, Leonard, Street and Deinard, to Jonathan Katz, Secretary, Commission (March 8, 1994).

[95] *Id.*

[96] One commentator, for example, states that "[a]n election should be defined and it should be made clear that if a contributor gives for a specified election, the amount shall only be considered as a contribution for the election for which the amount was given even if the candidate has the legal right to carry over amounts to other elections." Letter from D. Kelly, A.G. Edwards & Sons, Inc., to Jonathan Katz, Secretary, Commission (March 10, 1994).

[97] "An influence standard leaves the industry uncertain as to whom contributions may be made and, judged retrospectively, may cause inadvertent violations." *Id.*

[98] This "would allow all parties to regularly review G–37 to determine whether G–37 is effective and meeting the goals it was created to achieve and to accommodate any other relevant developments such as campaign finance reform." Letter from Carolie R. Smith, President, Smith Mitchell Investment Group, Inc., to Jonathan Katz, Secretary, Commission (March 9, 1994).

available for inspection and copying at the principal office of the MSRB. All submissions should refer to the file number in the caption above and should be submitted by May 4, 1994.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, section 15B(b)(2)(C).

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change and Amendment No. 1 described above be, and hereby are, approved, and shall be effective April 25, 1994.[99]

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–33869; File No. SR–MSRB–94–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Suitability of Recommendations

April 7, 1994.

On January 7, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change consisting of amendments to rule G–19, concerning suitability of recommendations, and rule G–8 concerning recordkeeping. The proposed rule change was published for comment in the **Federal Register**.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Background

In a letter dated May 8, 1992, the Commission's Division of Market Regulation asked the MSRB to review the requirements of rule G–19 on suitability of recommendations and to consider strengthening the requirements for transactions in certain types of municipal securities.[3] In September 1992, the Board published a request for comments on a number of customer protection issues, including the application of rule G–19 to customer transactions.[4] After reviewing these matters, the MSRB decided that rule G–19 embodies the appropriate general standard for dealers in making recommendations to customers, but recognized that there was a perception that certain provisions of the rule could be viewed as permitting recommendations to go forward without proper regard to the nature of the security being recommended and the customer to whom it is recommended. Accordingly, at its May 1993 meeting, the Board approved a Request for Comments on draft amendments to clarify and strengthen the suitability requirements of rule G–19. The MSRB requested public comment on the proposal,[5] and draft amendments were approved at the November 1993 Board meeting and form the basis of the rule change proposed herein. Shortly thereafter, 12 groups and associations representing a broad range of market participants submitted to the Commission a Joint Statement on Improvements in Municipal Securities Market Disclosure.[6] The Joint Statement called on the MSRB to monitor the effectiveness of its suitability rules and to strengthen those rules if appropriate.[7] The Joint Statement specifically called for suitability rules to require disclosure of ratings and whether the issuer has committed to provide annual financial reports.[8] In September, 1993, the MSRB indicated it was considering requiring municipal securities dealers to disclose to their customers the importance of secondary market information and whether the issuer has agreed to voluntarily provide such disclosures.[9]

II. Description

The proposed rule change amends MSRB rules G–19 and G–8 and is designed to strengthen the Board's customer suitability rule.

It eliminates two provisions from rule G–19. Rule G–19 generally requires that before making any recommendations to a customer, a dealer must first determine that the proposed transaction is suitable for the customer. One provision of the rule in its current form, which is in effect an exemption to it, permits a dealer to make a recommendation when a customer fails to provide sufficient information about himself, as long as the dealer has no reasonable grounds to believe and does not believe that the recommendation is unsuitable. The Board proposes deleting the provision to avoid any ambiguities regarding a dealer's obligation to make a suitability determination and to prevent any future use of the provision as an excuse for unsuitable recommendations. As a result of this rule change, a dealer who lacks specific information regarding a customer's financial status or investment objective, but reasonably believes that an investment is suitable for the customer, would not be permitted to go forward with the recommendation.

A second exemptive provision of the current rule allows dealers to recommend specific municipal securities to investors who want to invest in those securities even after being informed by the dealer that, based on their financial circumstances, investments in those securities would not be suitable. The Board also proposes deleting this provision to strengthen the suitability rule.

The proposed rule change also amends rule G–19 to clarify the information that municipal securities dealers must obtain from customers and when it must be obtained. For non-institutional customers, the rule change clarifies that dealers must make reasonable efforts to obtain the following information: The customer's financial status, tax status, investment objectives and such other information used or considered to be reasonable and

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[99] The Commission simultaneously issued an order relating to this matter, "Order Preliminarily Declining to Issue Stay Sua Sponte and Establishing Guidelines for Consideration of Stay Applications." Securities Exchange Act Release No. 33870 (April 7, 1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Exchange Act Release No. 33498 (January 21, 1994), 59 FR 3891 (January 27, 1994).

[3] See Letter from William H. Heyman, Director, Division, Commission, to Christopher Taylor, Executive Director, MSRB (May 8, 1992). See also Remarks of Richard Y. Roberts, Commissioner, SEC, "Proposals to Improve the Integrity of the Municipal Securities Market," Before the Bond Club of Virginia (June 13, 1992); "Preserve Integrity of Municipal Securities Market," Before the 1992 Bond Buyer Municipal Finance Conference (October 22, 1992); and "Commentary on Customer Protection Study Comments," Before the Public Securities Association (February 25, 1993).

[4] *MSRB Reports,* Vol. 12, No. 3 (Sept. 1992) at 3–7.

[5] *MSRB Reports,* Vol. 13, No. 3 (June 1993) at 7–10.

[6] *Joint Statement on Improvements in Municipal Securities Market Disclosure* ("Joint Statement") (December 20, 1993). The Joint Statement was submitted by the American Bankers Association's Corporate Trust Committee, American Public Power Association, Association of Local Housing Finance Agencies, Council of Infrastructure Financing Authorities, Government Finance Officers Association, National Association of Bond Lawyers, National Association of Counties, National Association of State Auditors, Comptrollers and Treasurers, National Association of State Treasurers, National Council of State Housing Agencies, National Federation of Municipal Analysts, and Public Securities Association.

[7] *Id.* at 3.

[8] *Id.* at 4.

[9] See MSRB, *Report of the Municipal Securities Rulemaking Board on Regulation of the Municipal Securities Market* (Sept. 1993) at 6–7.

necessary by the dealer in making recommendations to the customer.[10] The proposal does not establish a specific list of items that must be requested from institutional accounts.

The suitability rule itself applies equally to institutional and non-institutional accounts, irrespective of the different information gathering requirements. It states that for each recommendation of a municipal securities transaction, a broker or dealer shall have reasonable grounds, based upon information available from the issuer and facts disclosed by the customer or otherwise known about the customer, to believe that the recommendation is suitable.

The proposed rule change also revises the definition of "institutional account" contained in rule G–8. The new definition would add the accounts of savings and loan associations, investment advisers registered under Section 203 of the Investment Advisers Act of 1940 and other entities (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million to those of banks and registered investment companies under the definition of "institutional accounts." This amendment would make the Board's definition of "institutional account" the same as that established by Article III, section 21(c)(4) of the National Association of Securities Dealers ("NASD") Rules of Fair Practice for purposes of suitability determinations.

III. Discussion

Since the adoption of suitability rules in the late 1970's, there have been significant changes in the municipal securities markets. The number of retail investors has increased and the introduction of more complex, and in some cases, speculative municipal securities has become a characteristic of today's market. In addition, there have been a number of defaults in municipal securities in recent years, including some defaults in unrated and conduit bonds.[11]

As a result of these developments, the Commission believes it is critical that dealers have clear policies to ensure that sales personnel do not recommend securities to customers without proper regard to the nature of the security being recommended and the customer to whom it is being recommended. Furthermore, because of the lack of available information regarding prices and risk of municipal securities, brokers and dealers have an information advantage relative to their customers. Particularly in such an environment, it is wholly appropriate to hold brokers and dealers to high professional standards when making recommendations to their customers.[12]

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and in particular, section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in municipal securities and, in general, to protect investors and the public interest.

The Commission notes also that the proposed rule change addresses the concerns raised by the Division of Market Regulation in its 1993 report to Congress on the Municipal Securities Market.[13] In that report, the Division cited sales practices as one area that could benefit from increased MSRB attention and specifically encouraged the MSRB to update its suitability and customer protection rules.

The Commission believes that the proposed rule change will help prevent fraudulent and deceptive practices and promote just and equitable principles of trade because it is designed to ensure that dealers, before making a recommendation to a customer, take appropriate steps to determine that the municipal securities transaction is suitable. In particular, by clarifying and strengthening the rules governing the inquiries dealers must make of customers and the circumstances under which recommendations are permissible, the rule change will further important goals such as assuring the integrity of the market for municipal securities and safeguarding the interests of the investing public.

Institutional customers also will be better protected under the proposed rule change because brokers an dealers will be required to have reasonable grounds, based upon information available from the issuer and facts disclosed by or known about a customer, for believing that a recommendation is suitable, whether or not the client is an institution. Institutional and non-institutional customers will be treated differently only with respect to the precise information that must be obtained prior to a recommendation. For both types of customers, information still must be obtained that is adequate to support a reasonable suitability determination. There will be no difference in the standard a broker or dealer is held to in determining the suitability of that recommendation. Thus, in many cases, even though not required to obtain certain types of customer information for recordkeeping purposes, dealers will, as a practical matter, need to obtain the same types of information for certain institutional accounts as would be required for non-institutional accounts.[14]

Furthermore, by revising the definition of "institution" to conform with the definition used by the NASD,[15] the proposed rule change promotes consistency in classification, thereby facilitating the determination of the proper duty of inquiry owed to the particular client, and reduces confusion in the administration, compliance and surveillance of municipal securities dealers by NASD examiners.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

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[10] The proposed rule change also clarifies rule G–8 to require that customer suitability information used to make a suitability determination be recorded in the customer account record.

[11] Examples include the defaults engendered by the failures of Tucson Electric Power and Washington (State) Public Power Supply System, and the bankruptcies arising out of the Colorado Special Districts. See, *e.g.,* Stamas, "Rep. Dingell Asks SEC to Investigate Defaults by Special Assessment Districts in Colorado," *The Bond Buyer* at 1 (Jan. 25, 1991); Doyle, "SEC Chief Tells Congress Muni Market Probe Still Underway," *Associated Press* (September 9, 1993).

[12] As part of its overall effort to improve customer protection in the municipal securities market, the Commission also recently published for comment a proposed amendment to Rule 15c2–12 under the Securities Exchange Act of 1934. This amendment would, *inter alia,* make it unlawful for a broker or dealer to recommend the purchase or sale of a municipal security, without having reviewed the information the issuer of the municipal security has undertaken to provide. The purpose of the proposed amendment is to further deter fraud and manipulation in the municipal securities market by prohibiting the underwriting and subsequent recommendation of securities for which adequate information is not available.

[13] Division of Market Regulation, Securities and Exchange Commission, *Staff Report on the Municipal Securities Market* (Sept. 1993).

[14] The Commission believes that the NASD and the MSRB should reconsider specifying information collection requirements for dealers when recommending securities to "institutional accounts." In particular, the Commission believes that the NASD and the MSRB should evaluate (i) the appropriateness of dealers making such recommendations to high net worth individuals, absent the kind of information required to be obtained for non-institutional accounts; and (ii) the need to provide dealers with more definite guidance regarding the kind of customer information that they should obtain before making recommendations to different types of institutional accounts.

[15] NASD Rules of Fair Practice, Art. III, section 2(b), NASD Manual (CCH) 2152.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8839 Filed 4–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33852; File No. SR–NSCC–94–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Amending NSCC's By-laws to Provide for an Additional Member of the Board of Directors

April 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 4, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been primarily prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends NSCC's by-laws to allow for an additional member of the board of directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When NSCC was formed, the number of directors on the board was sixteen. To provide a greater representation of the participants in the management of NSCC, the number of directors on the board was increased to seventeen in 1984 and to eighteen in 1990.[2] NSCC's participant base has expanded significantly since 1990. Therefore, NSCC believes that it is in the participants' interest that the number of directors again be increased. NSCC's by-laws permit the number of directors to be increased from time to time. The rule change consists of an amendment to the by-laws increasing the number of directors on the board from eighteen to nineteen. Pursuant to NSCC's shareholders agreement, the board of directors is made up as follows: One director representing each shareholder (*i.e.*, the New York Stock Exchange, American Stock Exchange, and National Association of Securities Dealers), one director representing NSCC's management (*i.e.*, NSCC's president and chief executive officer), and the remaining directors are selected from NSCC's participants. The additional participant director will further the opportunity for participants to be represented on the board and to participate in the administration of NSCC.

NSCC believes the proposed rule change is consistent with section 17A(b)(3)(C)[3] of the Act because it increases the opportunity for NSCC's participants to be involved in the administration of NSCC's affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C)[4] states that the rules of a clearing agency must assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the proposed increase in the number of directors on the board is consistent with NSCC's obligations under section 17A because the result will be a board which reflects, to a greater degree, NSCC's participants. As a result, participants will be afforded additional opportunities to raise, discuss, and help resolve issues that effect them.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because it will give NSCC the opportunity to have the additional participant member elected and possibly participate in the next board meeting, which is scheduled for April 1994.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–94–03 and should be submitted by May 4, 1994.

It Is Therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–94–03) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8806 Filed 4–12–94; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 27984 (May 2, 1990), 55 FR 19400 [File No. SR–NSCC–90–02] (order approving proposed rule change).

[3] 15 U.S.C. 78q–1(b)(3)(C) (1988).

[4] *Id.*

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12) (1993)

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

April 7, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Hi Shear Technology Corporation
Common Stock, $.001 Par Value (File No. 7–12269)
Highlander Income Fund, Inc.
Common Stock, No Par Value (File No. 7–12270)
Grupo Embotellador de Mexico S.A. de C.V.
Global Depositary Shares and Rep. 2 Ord. Shrs (File No. 7–12271)
JDN Realty Corporation
Common Stock, $.01 Par Value (File No. 7–12272)
Fidelity Advisor Emerging Asia Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12273)
RCM Strategic Global Government Fund, Inc.
Common Stock, $.0001 Par Value (File No. 7–12274)
Security Capital Industrial Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12275)
Emerging Markets Floating Rate Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12276)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 28, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 94–8802 Filed 4–12–94; 8:45 am]

BILLING CODE 8010–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings for Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 16 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The 1994 meetings are scheduled as follows:

1. April 27, 9 a.m. to 1 p.m., San Diego, California, Region 6 Advisory Board.
2. May 10, 9 a.m. to 1 p.m., Buffalo, New York, Region 1 Advisory Board.
3. May 12, 9 a.m. to 1 p.m., Detroit, Michigan, Region 3 Advisory Board.
4. May 17, 9 a.m. to 1 p.m., Santa Fe, New Mexico, Region 5 Advisory Board.
5. May 24, 9 a.m. to 1 p.m, Tampa, Florida, Region 2 Advisory Board.
6. May 26, 9 a.m. to 1 p.m., Austin, Texas, Region 4 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. San Diego, California—Doubletree Hotel at Horton Plaza, 910 Broadway Circle.
2. Buffalo, New York—Hyatt Regency Buffalo, Two Fountain Plaza.
3. Detroit, Michigan—The Westin Hotel, Renaissance Center.
4. Santa Fe, New Mexico—TBA.
5. Tampa, Florida—Holiday Inn Crowne Plaza/Westshore, 700 N. Westshore Boulevard.
6. Austin, Texas—Hyatt Regency Austin, 208 Barton Springs Road.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

PURPOSE: The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

AGENDA: Topics to be addressed at the six meetings will include progress reports on the transition of RTC into the Federal Deposit Insurance Corporation, minority preference provisions in the RTC Completion Act, transference of RTC assets to the nearest regional office for management and disposition, minority participation in the RTC Small Investor Program, and RTC's marketing efforts to community development organizations. In addition, the Boards' will review the impact of RTC property sales on local real estate market conditions, RTC's reduction efforts for SAMDA's and SAMA's and the status of RTC's Affordable Housing Program. The Boards will hear from the vice presidents of each of RTC's regional offices as well as from witnesses testifying on specific agenda topics.

STATEMENTS: Interested persons may submit to an Advisory Board written statements, data, information, or views on the issues pending before the Board prior to or at the meeting. The meetings will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: April 8, 1994.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 94–8907 Filed 4–12–94; 8:45 am]

BILLING CODE 2222–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 94–26; Notice 01]

AM General Corp.; Receipt of Petition For Determination of Inconsequential Noncompliance

AM General Corporation of Livonia, Michigan has determined that some of its vehicles fail to comply with Paragraph S5.3.1.1 of 49 CFR 571.108, Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices, and Associated Equipment," and has filed an appropriate report pursuant to 49 CFR part 573. AM General has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the

National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.3.1.1 of Standard No. 108 states in part that "* * * no part of the vehicle shall prevent * * * any other lamp from meeting the photometric output at any test point specified in any applicable SAE Standard or Recommended Practice."

AM General determined that certain of its 1992–1994 HUMMER vehicles do not meet the requirements of Paragraph S5.3.1.1 in Standard No. 108. The HUMMER is a truck. Its gross vehicle weight rating is 10,300 pounds. The noncompliant vehicles were built from July 1992 through February 1994, and are those models equipped with an optional rear-mounted, swingaway carrier for a full-size spare tire.

AM General stated that the HUMMER is required to be equipped with identification lamps at the rear of the vehicle, since the width of the HUMMER exceeds 80 inches. The HUMMER has three identification lamps (left-side, center, and right-side) mounted on a horizontal bar just above the rear bumper. The noncompliance is that the optional spare tire and its carrier, supported by the rear bumper, obstruct some visibility of each of the three identification lamps. On 578 vehicles, built from July 1992 through January 1994, a photometric noncompliance exists at the 10U 45R test point on the right lamp, and the 10U 45L test point on the left and center lamps.

AM General explained that its solution for this problem was to lower the lamps by 0.75 inch. However, "[s]ubsequent to implementing this revision, it was discovered that a small hex screw head (¼ x ⅝) on the spare tire carrier now obstructed the [V 10]D test point on the center lamp with the lamp in the revised lower position." The vehicles involved in this second noncompliance were built in February 1994. The actual number of vehicles is not known at this time.

AM General stated it believes the first noncompliance among the 578 vehicles is inconsequential as it relates to motor vehicle safety, and offered the following rationale:

> The obscuration of the lamps by the wheel/tire assembly affects only a 10 U45 test point for each lamp * * *. [T]his typically reduces the visibility angle from 10° to about 7°. At a following distance of 12 feet in an adjacent lane, this reduces the effective visibility point by less than 8 [inches] * * *.
>
> The obscuration occurs only in close proximity to the vehicle. Since an identification lamp is a steady-burning market lamp, not a signaling lamp, its function is most important as a vehicle approaches from the rear. For approaching vehicles in which the operator's seating position is high above the ground, such as a bus or a heavy truck, the lamp would be fully visible to the operator until the operator was about 25 [feet] behind. For conventional passenger cars, the lamp will remain visible until the operator is 12–15 [feet] behind. (This assumes a go/no go visibility situation. In reality the lower portion of the lamp lens will still be visible at these distances, although the photometric output is reduced).
>
> The rear surface of the HUMMER is already highly decorated with multiple marker lamps * * *. In addition to the partially obstructed identification lamp(s), at least one identification lamp is always visible from either side. A clearance lamp is supplied on the rear of each fender, as well as two taillamps * * *. With so much prominent lighting on the rear of the vehicle we believe that the loss of visibility of a portion of each lamp in only a very small visibility regime represents no hazard to motor vehicle safety. Any following vehicle in an adjacent lane will have more than sufficient indication of the size and presence of the vehicle.

AM General also stated it believes the second noncompliance among the vehicles built in February 1994 is inconsequential as it relates to motor vehicle safety, and offered the following rationale:

> The obscuration of the lamp affects only the V [10]D test point. As described above, the HUMMER is already amply equipped with rear marker lamps, and any following vehicle will have more than adequate notice of the presence of the vehicle.

Interested persons are invited to submit written data, views, and arguments on the petition of AM General, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 13, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 7, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–8811 Filed 4–12–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 4, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0118.

Form Number: PD F 5336.

Type of Review: Extension.

Title: Application for Disposition—United States Savings Bonds/ Notes and/or Related Checks Owned by Decedent Whose Estate is Being Settled Without Administration.

Description: This form is used by person(s) entitled to a decedent's estate not being administered to request payment or reissue of savings bonds/ notes and/or related checks.

Respondents: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 40,000 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–8833 Filed 4–12–94; 8:45 am]

BILLING CODE 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 71
Wednesday, April 13, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Wednesday, April 13, 1994.

PLACE: 6th Floor, 1730 K Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Nally & Hamilton Enterprises, Inc. v. Secretary of Labor o/b/o Clayton Nantz,* Docket No. KENT 92–259–D. (Issues include whether the judge erred in finding that Mr. Nantz was discriminatorily discharged in violation of 30 U.S.C. § 815(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: April 6, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–9049 Filed 4–11–94; 3:07 pm]

BILLING CODE 6735–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 7–94

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified as follows:

Date and time	Subject matter
Thurs., April 21, 1994 at:	Oral Hearings on objections to Proposed Decisions issued on claims against Iran:
10:00 a.m	IR–0361—Diversified Impex.
	IR–0935—Saks International.
	IR–2908—All State Fastener.
	IR–2910—I.J. Imports.
	IR–2911—Liberty Fasteners.
	IR–2912—Mansa.
	IR–2913—Maxter Metal Corp.
	IR–2914—Rockford International.
	IR–3015—Ram Cummins Tool Corp.
	IR–3016—Imptex International.
	IR–3111—Toplis & Harding.
2:00 p.m	IR–2785—Shirley Westergren.
2:30 p.m	IR–2361—Esshagh Moradfar.
3:00 p.m	IR–2099—Alexis VanDernat.
3:30 p.m	IR–3125—Ray Raft.
	IR–3126—Carolyn Raft.
	IR–3127—
4:00 p.m	IR–2433—T. Glenn Pobanz.
Fri., April 22, 1994 at 10:30 a.m.	Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, on April 11, 1994.

Judith H. Lock,

Administrative Officer.

[FR Doc. 94–9042 Filed 4–11–94; 2:52 pm]

BILLING CODE 4410–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 16893, April 8, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, April 13, 1994.

CHANGES IN THE MEETING: The open meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 8, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–8980 Filed 4–11–94; 12:01 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, April 18, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment and software within the Federal Reserve System.
2. Proposed acquisition of communications equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. 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: April 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–8981 Filed 4–11–94; 12:01 pm]

BILLING CODE 6210–01–P

federal register

Wednesday
April 13, 1994

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 34

Correction to References in the Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 34

[Docket No. 27686, Notice No. 94–10]

RIN 2120–AE55

Correction to References in the Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend a specific reference in the Federal Aviation Regulations (FAR) to provide that the preproduction certification compliance program described in Appendix 6 to International Civil Aviation Organization (ICAO) Annex 16 is an acceptable means of compliance with gaseous emission standards. This document also proposes to amend specific references to add the effective date of Volume II of Annex 16. These proposals respond to public inquiries, and are intended to ensure that the regulations accurately reflect what was intended by the originally proposed rule.

DATES: Comments must be submitted on or before June 13, 1994.

ADDRESSES: Send comments on this proposal to: Federal Aviation Administration (FAA), Office of the Chief Counsel, ATTN: Rules Docket, room 316G, Docket No. 27686, 800 Independence Avenue SW., Washington, DC 20591 or deliver comments in triplicate to: FAA Rules Docket, room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m., weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McQueen, Research and Engineering Branch (AEE–110), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impacts of this proposal. Comments should identify the regulatory docket or notice number, and should be submitted in triplicate to the address above. All comments received, as well as a report summarizing any substantive public contact with Federal Aviation Administration (FAA) personnel on this rulemaking will be filed in the docket, and will be considered by the Administrator before taking action on this proposed rulemaking. The docket is available for public inspection both before and after the closing date for comments. The FAA will acknowledge the receipt of a comment if the commenter includes a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27686." When the comment is received by the FAA, the postcard will be date stamped and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3474. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11–2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Section 232 of the Clean Air Act Amendments of 1970, (42 U.S.C. 7401 *et. seq.*), requires the Federal Aviation Administration (FAA) to issue regulations that ensure compliance with all aircraft emission standards promulgated by the Environmental Protection Agency (EPA) under Section 231 of the Act. Those emission standards are prescribed in 40 CFR part 87. The FAA issued Special Federal Aviation Regulation (SFAR) Number 27 (38 FR 35427, December 28, 1973) to ensure compliance with the aircraft and aircraft engine emission standards and test procedures issued by the EPA in 40 CFR part 87.

In 1989, the FAA proposed to codify SFAR 27 (53 FR 18530, May 23, 1988). The notice of proposed rulemaking (NPRM) proposed to add part 34 to the Federal Aviation Regulations (FAR). The NPRM included proposed § 34.71, which stated that compliance with gaseous emission standards would be shown by comparing the pollutant levels with the applicable emission standards. Proposed § 34.71 also stated that an acceptable means of compliance would be incorporated by reference in proposed § 34.4. Proposed § 34.4 referenced the preproduction program described in Appendix 6 to International Civil Aviation Organization (ICAO) Annex 16, "Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982," as an acceptable means of compliance with § 34.71.

In August of 1990, the proposal was adopted as part 34, "Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes," effective September 10, 1990 (55 FR 32856, August 10, 1990). Part 34 contains all of the applicable aircraft engine fuel venting and exhaust emission requirements of SFAR 27, and the test procedures specified under the regulations implementing the Clean Air Act. Section 34.4 was not adopted as proposed, but was "reserved." The FAA had intended to, instead, specifically incorporate in § 34.71 the reference to Appendix 6 of ICAO Annex 16; however, the reference to an acceptable means of compliance was inadvertently omitted. In addition, the final rule did not state the effective date of Volume II of ICAO Annex 16 in several other sections where this cite was referenced.

After part 34 was adopted, the FAA received several requests for clarification of the compliance standards stated in FAR § 34.71; the FAA also received inquires as to why Appendix 6 to Volume II of ICAO Annex 16 was omitted as an acceptable alternative to testing every engine. Members of the public stated that §§ 34.4 and 34.71 were different from those proposed in the NPRM. The FAA recognizes that the final rule, as adopted, caused the confusion. In responding to the inquires, the FAA has stated that the intent of the 1989 proposal was to accept Appendix 6 as an alternative means of compliance. Accordingly, the FAA has determined that §§ 34.71 should be amended to reflect the intent of the proposal.

Synopsis of the Proposal

The FAA proposes to revise § 34.71 of part 34 of the FAR to state that Appendix 6 to International Civil Aviation Organization (ICAO) Annex 16, "Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982," is an acceptable means of compliance with that section. In addition, §§ 34.64, 34.82, and 34.89 of part 34 would be revised to state that

the effective date of Volume II of Annex 16 is February 18, 1982.

Regulatory Impact Evaluation

This regulatory evaluation examines the potential costs and benefits of the proposed rule to amend FAR part 34.

The objective of the proposed rule is to insert omissions from the current text for part 34, which was published in August 1990. The omissions include the reference to Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II and the effective date of ICAO rule. In short, the proposed revisions would correct these omissions by referencing the preproduction certification compliance program described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II and including the effective date of February 18, 1982, for all references to Volume II of ICAO Annex 16 in part 34.

Benefits

The potential benefits of this proposed rule ensure that the full intent of final rule for part 34 would be realized, and will eliminate any confusion caused by the noted omissions.

Costs

The potential costs of the proposed rule would be zero. No significant adverse consequences have been incurred by either the public or the FAA as a result of the published error. After publication, however, the FAA's Office of Environment and Energy was made aware of the error through public inquiry. The proposed amendments would address these inquiries and prevent future misunderstandings.

International Trade Impact Analysis

The proposed rule represents a clarifying change and would not impose any costs on either U.S. or foreign operators. Therefore, a competitive trade advantage would not be incurred by either U.S. operators abroad or foreign operators in the United States.

Initial Regulatory Flexibility Determination

In accordance with the Regulatory Flexibility Act of 1980, the proposed rule would not have a significant economic impact on a substantial number of small entities. This is because the proposed rule is clarifying in nature and would not impose any costs.

Environmental Analysis

This proposed rule represents a clarifying change and would not significantly affect the quality of the human environment. In addition, pursuant to Department of Transportation, "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D, appendix 7, paragraph 4), the FAA was categorically excluded from providing an environmental analysis with regard to part 34 because it was mandated by law to issue regulations to ensure compliance with the EPA aircraft emissions standards, and the EPA has performed all required environmental analyses prior to the issuance of those standards.

Federalism Implications

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 proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

I certify that the proposed rule: (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) 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 34

Air pollution control, Aircraft.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR part 34 of the Federal Aviation Regulations as follows:

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

1. The authority citation for part 34 continues to read as follows:

Authority: 42 U.S.C. 1857f–10; 49 U.S.C. 106(g); 49 U.S.C. App. 1348(c), 1354(a), 1421, 1423.

2. Section 34.64 is amended by revising the first sentence to read as follows:

§ 34.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be done in accordance with Appendices 3 and 5 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. * * *

3. Section 34.71 is revised to read as follows:

§ 34.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle or grams/kilowatt/cycle as calculated pursuant to § 34.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. Other methods of demonstrating compliance may be approved by the Administrator with the concurrence of the Administrator of the EPA.

4. Section 34.82 is amended by revising the first sentence to read as follows:

§ 34.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be done in accordance with Appendix 2 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. * * *

5. Section 34.89 is amended by revising the third sentence to read as follows:

§ 34.89 Compliance with smoke emission standards.

* * * An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. * * *

Issued in Washington, DC on April 7, 1994.

Louise E. Maillett,

Director of Environment and Energy.

[FR Doc. 94–8840 Filed 4–12–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
April 13, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61 and 141
Renewal of Flight Instructor Certificates; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 141

[Docket No. 27184; Amdt. Nos. 61–95 and 141–5]

RIN 2120–AF13

Renewal of Flight Instructor Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations (FAR) governing the renewal of flight instructor certificates by permitting holders of flight instructor certificates to renew their certificates by completing an approved number of hours of ground or flight instruction, or both, in an approved flight instructor refresher course (FIRC). The effect of this final rule will provide an equivalent level of safety while reducing the financial burden placed on individual flight instructors.

EFFECTIVE DATE: April 13, 1994.

FOR FURTHER INFORMATION CONTACT: John Lynch, Regulations Branch (AFS–850), General Aviation and Commercial Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267–8150.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs (APA–200), 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267–3484. Communications must identify the docket number of this amendment.

Background

The decision to amend the specific number of hours of instruction that holders of flight instructor certificates must complete in an approved FIRC to renew their certificates originated from a petition for exemption submitted by the AOPA. The AOPA petitioned the Federal Aviation Administration (FAA) for exemption from § 61.197(c) of the FAR to permit holders of flight instructor certificates to renew their certificates by attending an approved FIRC of 16 hours of ground or flight instruction, or both, in lieu of the current 24 hours required by § 61.197(e). The AOPA fully described its rationale in its petition for exemption.

The FAA agreed with the AOPA's rationale in its petition for exemption. There is a need to streamline current FIRCs to provide for a condensed weekend renewal program. The majority of certificated flight instructors maintain personal or professional responsibilities such that weekend renewal is a needed option for the maintenance of their certificate. The recent advances in instructional technology and training techniques more than compensate for a reduction in classroom time requirements. The innovative and interactive educational programs, such as the AOPA's "Trigger Tapes" and "Operation Airspace" facilitating learning at the application level, allow for a reduction in the amount of hours that holders of flight instructor certificates must complete in an approved FIRC to renew their certificates while maintaining the current level of safety.

The FAA determined, however, that rulemaking was necessary to permit holders of flight instructor certificates to renew their certificates by attending an approved FIRC of fewer hours of ground or flight instruction, or both, than the 24 hours currently required by the FAR. Therefore, the FAA decided that the appropriate response to the AOPA's petition for exemption was to propose a change to the existing regulations. The FAA concluded that the current level of safety would be maintained and was appropriate in light of the recent advances in instructional technology and training techniques. In addition, the FAA determined that the option to specify the number of hours of instruction through an FAA approval, as part of the approved renewal program, will offer substantial benefits to the aviation community; specifically, it will eliminate the burden of the longer 24 hour course, mitigate the current decline in instructional resources, and offer financial advantages to individual flight instructors. For example, approval of AOPA's 16 hour course will allow a 1 day reduction in travel expenses to individual flight instructors saving an average per diem cost of $100.

The AOPA petition for exemption was published in the **Federal Register** on March 17, 1993 (58 FR 14466). The FAA received two comments on the petition of which both comments voiced support. After review of the petition and the submitted comments, the FAA concluded that while the petition had considerable merit, the AOPA was not unique in its position. Therefore, on September 17, 1993, the FAA issued Notice No. 93–11 (58 FR 48748) that proposed to permit holders of flight instructor certificates to renew their certificates by completing an approved number of hours of ground or flight instruction, or both, in an approved FIRC.

Discussion of Public Comments

A. General

The FAA received 47 comments in response to Notice No. 93–11, mostly from certified flight instructors (CFI's). The following organizations also submitted comments: Aircraft Owners and Pilots Association (AOPA), AOPA Air Safety Foundation, Arizona Pilots Association, Embry-Riddle Aeronautical University, Gaits Aviation Seminars, Inc., Hoffman Pilot Center, Inc., Richmor Aviation, Skylanes, Inc., and Wisconsin Department of Transportation.

Thirty-three commenters, including the Arizona Pilots Association, Embry-Riddle Aeronautical University, Gaits Aviation Seminars, Inc., Skylanes, Inc., and the Wisconsin Department of Transportation support the proposal to amend § 61.197(c) of the FAR by permitting holders of flight instructor certificates to renew their certificates by completing an approved number of hours of ground or flight instruction, or both, in an approved FIRC.

Three commenters, including the AOPA and the AOPA Air Safety Foundation, indicate that while they agree with the proposal to amend the specific number of hours of instruction that holders of flight instructor certificates must complete in an approved FIRC to renew their certificates, they believe that 16 hours should be the minimum number of hours in an approved FIRC and that this minimum requirement should be written into the rule to avoid any misinterpretation. The FAA has determined that instructional technology and training techniques will continue to change and develop over time. Therefore, the FAA has concluded that the appropriate response is not to state the specific number of hours in the rule, which may change over time, but to address the standards and recommended number of hours required for an approved FIRC through an Advisory Circular that the FAA will develop to ensure that a high level of safety is maintained.

Hoffman Pilot Center, Inc. and one other commenter are opposed to reducing the number of hours currently required in an approved FIRC. Hoffman believes that reducing the number of required hours in an approved FIRC to 16 hours is a marketing ploy rather than an accurate accounting for the changing information in the aviation industry.

The other commenter believes the current 24-hour requirement is inadequate and that by going to a reduced number of hours in an approved FIRC would only serve to make the entire FIRC class "one large video program." The FAA has determined that reducing the amount of hours that holders of flight instructor certificates must complete in an approved FIRC to renew their certificates will not have an adverse effect on safety. The FAA has concluded that the recent advances in instructional technology and training techniques allow for a reduction in the specific number of hours in an approved FIRC while maintaining the current level of safety.

B. Cost Impact

One commenter feels that the FAA overestimated the value of flight instructor time; in the economic evaluation the FAA assumed that a flight instructor earned approximately $20 per hour, the commenter believes it is more like $11 per hour. The FAA has determined that while some flight instructors earn $11 per hour, other flight instructors earn $35 per hour. The FAA has concluded that on the average a flight instructor earns $20 per hour and that this is a reasonable number.

C. Recommendations

Richmor Aviation and one other commenter agree with the proposal to allow for approval of the number of hours of instruction that holders of flight instructor certificates must complete in an FAA approved FIRC to renew their certificate but points out that a parallel provision in § 141.79(c) also needs to be amended to be consistent with § 61.197(c). Section 141.79(c) requires each chief flight instructor in an approved FAA part 141 school, to complete at least once each 12 months, a flight instructor refresher course consisting of not less than 24 hours of ground or flight instruction, or both. While § 141.79(c) deals with a school setting as opposed to § 61.197(c), which deals with the individual, the FAA has determined that it is a parallel provision with identical issues as those presented in Notice No. 93–11. Therefore, to afford part 141 chief flight instructors the benefits given to part 61 flight instructors, the FAA will make a conforming amendment to § 141.79(c) that will be reflected in this final rule. The FAA has concluded that under Section 4(a) of the Administrative Procedures Act (APA), 5 U.S.C. 553(a), the notice and public comment requirements of Section 553(b) of the APA are unnecessary.

D. Additional Comments

The FAA received two comments that requested revisions to the rule that are beyond the scope of the notice. One commenter supports the proposal only if a flight check also is required for renewal of a flight instructor certificate because requiring classroom time without a flight check does not ensure that the flight instructor can apply the knowledge learned from the classroom. Another commenter is opposed to the proposal on the grounds that safety would be better served if the flight instructor were required to demonstrate competency in an aircraft for renewal of the flight instructor certificate, as opposed to classroom time.

One commenter requests that the word "she" be taken out of the amended rule language in § 61.197(c), and one commenter suggests that the FAA should form a task group to study technology advancements in education and their applicability to the FIRC's. Both commenters agree with the proposal to allow for approval of the number of hours of instruction that holders of flight instructor certificates must complete in an FAA approved FIRC to renew their certificate.

International Civil Aviation Organization and Joint Aviation Regulations

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because flight instructor certification requirements have virtually no bearing on flight operations internationally.

Paperwork Reduction Act

This final rule will not change reporting requirements. Therefore, in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no additional requirements for information collection associated with this final rule.

Economic Evaluation

This section contains the full regulatory evaluation prepared by the FAA that provides information on the economic consequences of this regulatory action. This evaluation quantifies, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12866, dated September 30, 1993, directs Federal agencies to promulgate new regulations or modify existing regulations only if benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of an economic analysis of all "significant regulatory actions" except those responding to emergency situations or other narrowly-defined exigencies.

The FAA has determined that this rule is not significant. Therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives to the rule has not been prepared. Instead, the agency has prepared a more concise regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and an international trade impact assessment. Accordingly, the FAA makes the following economic evaluation of this rule. Based on the results of its investigation, the FAA has concluded that this final rule is cost-beneficial.

Benefit-Cost Analysis

Current holders of flight instructor certificates may renew their certificates if they successfully complete an approved FIRC consisting of not less than 24 hours of ground or flight instruction, or both. The FAA has determined, however, that recent advances in instructional technology and training techniques allow for a reduction in the number of required instruction hours without compromising safety. The FAA will develop the standards and recommended number of hours required for an approved FIRC. This will be done to ensure that a high level of safety is maintained.

The benefits of this rule are the cost savings from the reduction in required instructional hours and travel expenditures for the affected flight instructors. For example, approval of AOPA's 16 hour course would allow a 1 day reduction in travel expenses to individual flight instructors: assuming an average per diem cost of $100 and that two-thirds of the annual average of 20,000 flight instructors renewing their certificates through FIRCs would have to travel out of town, the industry could realize an annual savings of $1.3 million in per diem travel expenses. There also will be a reduction in foregone earnings. Assuming a flight instructor earns $20 per hour and provides 4 to 8 hours of instruction per day, the reduction in foregone earnings would be between $1.6 million and $3.2 million annually. In addition, the FAA believes that individual flight instructors will realize a savings in the cost of the FIRC by the

reduction in the number of required instruction hours.

There will be no incremental costs associated with this final rule since the number of instruction hours required in a FIRC would be relaxed. The FAA has concluded that there will be no degradation of safety as any reduction in instructional hours would be the result of advances in instructional technology and training techniques. The FAA believes that it is the content of the FIRC, not the specific number of hours of instruction in that FIRC, that is important to safety. Therefore, the FAA has concluded that the final rule is cost-beneficial.

International Trade Impact Analysis

This final rule will have a negligible impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the U.S. The final rule primarily affects certificated flight instructors, not businesses involved in the sale of aviation products or services.

Regulatory Flexibility Determination

The final rule will not have a significant economic impact, positive or negative, on small entities. Flight instructors, rather than small entities, will be affected by this final rule. Where a flight instructor is also the sole proprietor of a small business, and exercises the privileges of his or her certificate in operations that are incidental to that business, the final rule will have a negligible impact.

Federalism Impact

The regulations adopted herein will not have a substantial direct effect 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 amendment does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not significant under Executive Order 12866. In addition, the FAA certifies that this final rule 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. This rule is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this reason, it has been determined that the expected economic impact of this amendment is so minimal that a full Regulatory Evaluation is not warranted.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 141

Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools.

The Rule Amendments

Accordingly, pursuant to the Authority delegated to me, the FAA amends 14 CFR parts 61 and 141 of the Federal Aviation Regulations as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.197 is amended by revising paragraph (c) to read as follows:

§ 61.197 Renewal of flight instructor certificates.

* * * * *

(c) He or she has successfully completed, within 90 days before the application for the renewal of his or her certificate, an approved flight instructor refresher course consisting of ground or flight instruction, or both.

PART 141—PILOT SCHOOLS

3. The authority citation for part 141 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, 1427, and 1655(c).

4. Section 141.79 is amended by revising paragraph (c) to read as follows:

§ 141.79 Flight instruction.

* * * * *

(c) Each chief flight instructor must complete at least once each 12 months, an approved flight instructor refresher course consisting of ground or flight instruction, or both.

* * * * *

Issued in Washington, DC, on April 6, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–8776 Filed 4–12–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
April 13, 1994

Part IV

Department of Education

34 CFR Part 668 et al.

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Direct Student Loan, and Federal Pell Grant Programs

AGENCY: Department of Education.

ACTION: Notice of relief from regulatory provisions.

SUMMARY: The Secretary of Education announces regulatory relief from specific regulations governing the Federal Perkins Loan, Federal Work-Study (FWS), Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Family Education Loan (FFEL), Federal Direct Student Loan, and Federal Pell Grant programs, for the 1993–94 and 1994–95 award years, to assist institutions and individuals who suffered financial harm from the California earthquake of January 1994.

EFFECTIVE DATE: This notice takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kathy S. Gause, Senior Program Specialist, Grants Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW., (Regional Office Building 3, room 4018), Washington, DC 20202–5447. Telephone (202) 708–4690. 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: Many institutions of higher education, student financial aid applicants, and recipients have been adversely affected by the earthquake in California. The President signed the Emergency Supplemental Appropriations Act of 1994 (Pub. L. 103–211) on February 12, 1994. The Act authorizes the Secretary to reallocate any excess funds under the Federal Perkins Loan and the FWS programs from the 1993–94 award year to assist individuals who suffered financial harm as a result of the California earthquake of January 1994. The Secretary has the authority to reallocate these funds only to institutions for use in the 1994–95 award year. Institutions will be informed of the application procedures for obtaining reallocated funds to assist California earthquake victims in a letter issued by the Department to financial aid administrators.

The Emergency Supplemental Appropriations Act of 1994, however, does not expressly authorize the reallocation of funds returned under the FSEOG Program. The Higher Education Act of 1965, as amended (HEA), in section 413D permits the Secretary, in accordance with regulations, to reallocate excess FSEOG funds returned by an institution to other institutions. Under current FSEOG regulations (34 CFR 676.4), the Secretary reallocates funds on a *pro rata* basis, *i.e.*, the amount of an institution's fair-share shortfall as a percentage of the fair-share shortfalls of all participating institutions with an unmet FSEOG request. The Secretary has decided to promulgate standards to allow excess funds under the FSEOG Program from the 1993–94 award year to be reallocated during the 1994–95 award year to assist students adversely affected by the California earthquake. The funds will be reallocated to institutions that enroll students adversely affected by the earthquake and submit applications in the format required by the Secretary. If the total funds requested exceed the total funds available, the funds will then be reallocated on a *pro rata* basis only among these institutions to provide assistance to students whose financial need has increased as a result of the 1994 California earthquake.

The Secretary recognizes the severe impact the earthquake has had on institutions and their students located in the designated natural disaster areas. Many institutions and individuals adversely affected by the earthquake are facing immediate problems concerning the disbursement and repayment of student loans.

The Title IV student financial aid programs affected by this notice are the FFEL Program (consisting of the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program); the Federal Direct Student Loan Program; the Federal Pell Grant Program; and the Federal Perkins Loan, FWS, and FSEOG programs (known collectively as the campus-based programs). To assist both institutions and individuals, this notice also provides certain regulatory relief to institutions in their administration of these student financial aid programs.

The Secretary has already provided certain regulatory relief to lenders and guaranty agencies in the FFEL Program under section 432(a)(6) of the HEA and 34 CFR 682.406(b) and 682.413(f). The guaranty agency directors were informed of this relief in a letter dated January 31, 1994.

Covered Individuals

This notice is intended to assist institutions and individuals that have been adversely affected by the California earthquake of January 1994. This notice will apply to institutions that were unable to maintain normal operations because they were located in Los Angeles, Orange, or Ventura Counties on the date on which the President declared the existence of a major disaster. This notice of relief also applies only to individuals who suffered financial harm from the disaster and, at the time the disaster occurred, were residing, attending an institution of higher education, or employed in the counties designated as disaster areas (or, in the case of an individual who is a dependent student, whose parent or stepparent suffered financial harm from such disaster and resided or was employed in such an area at that time). This notice of regulatory relief will be applicable for awards made under the Title IV programs and collection activities conducted under the Federal Perkins Loan Program during the 1993–94 and 1994–95 award years (the periods from July 1, 1993 to June 30, 1994 and July 1, 1994 to June 30, 1995).

Note: For further updates to the list of designated disaster areas, institutions may contact the Department on its toll-free number at 1–800–433–3243 between 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday. Individuals who use a telecommunications device for the deaf (TDD) may call 1–800–730–8913 between 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday.

The Secretary provides the following enforcement relief from the regulations governing the student financial aid programs under Title IV of the HEA:

I. 34 CFR Part 668—Student Assistance General Provisions

A. 34 CFR 668.19 Financial Aid Transcript

Under current regulations, before a student who previously attended another eligible institution may receive any Title IV, HEA program funds, the institution to which the student is transferring must make an effort to obtain the student's financial aid transcript. The Secretary is waiving the

requirement to obtain financial aid transcripts before disbursing funds for individuals who attended institutions covered by this notice for the 1993–94 and 1994–95 award years. If the financial aid transcript is not available as a result of damage caused by the California earthquake, the institution may disburse Title IV funds. Any institution affected by this situation must document in the student's file that the financial aid transcript is unavailable due to damage stemming from the natural disaster. In addition, the student will still be expected to provide statements concerning all prior financial aid received, and the institution will be expected to retain this information in the student's file.

B. 34 CFR 668.51–668.61 Subpart E—Selection of Applicants for Verification

The Secretary is waiving verification requirements under 34 CFR 668.51–668.61 during the 1993–94 and 1994–95 award years for those applicants who are selected for verification and whose records were lost or destroyed because of the California earthquake. The institution must document in the student's file that the records are unavailable due to damage stemming from the natural disaster. For these students, Verification Status Code "S" may be used when reporting a Federal Pell Grant disbursement.

II. 34 CFR Part 690—Federal Pell Grant Program

34 CFR 690.83 Submission of Reports

The Secretary modifies the deadline in 34 CFR 690.83(a)(1)(i) that an institution submit all SAR Payment Vouchers (or the equivalent) for an award year by September 30 following the end of the award year in which the grant is made. The Secretary will extend this reporting date, on a "case-by-case" basis, for institutions affected by the California earthquake.

III. 34 CFR Part 674 and 676—Federal Perkins Loan and FSEOG Programs

A. Federal Perkins Loan Program

1. 34 CFR 674.31 Promissory Note

Under 34 CFR 674.31(b)(2), the terms of a student's promissory note require that repayment of a loan must begin six (6) or nine (9) months after a borrower ceases to be at least a half-time regular student and that the repayment period normally ends 10 years later. The Secretary is modifying this provision that specifies the commencement of a borrower's repayment period to provide that any borrower who was in an "in-school" status at the time the natural disaster occurred and was unable to complete course requirements or enroll in classes due to the earthquake will continue to be in an "in-school" status until such time as the borrower withdraws or until the end of the 1993–94 award year, whichever is earlier. The institution must document this reason for continued "in-school" status in the student's file.

2. 34 CFR 674.42 Contact With the Borrower

The Secretary will not require an institution to comply with the provisions of § 674.42(b) that require an institution to make contact with the borrower during an initial or postdeferment grace period if that grace period coincides with the California earthquake. These requirements shall be suspended for a period of time not to exceed the earlier of either the date on which the institution is able to resume normal contact with the borrower or June 30, 1994. An institution must document the reason for suspension of these activities in the borrower's file.

3. 34 CFR 674.41–674.50 Subpart C—Due Diligence

The Secretary will not enforce 34 CFR part 674, subpart C—Due Diligence. An institution may suspend the collection activities for borrowers already in default at the time of the natural disaster. These requirements shall resume on July 1, 1994. An institution must document the reason for suspension of these activities in the borrower's file.

4. 34 CFR 674.34–674.37 Deferment of Repayment

The Secretary modifies the provisions for hardship deferment in 34 CFR 674.34(i), 674.35(e), and 674.36(e) and authorizes an institution to grant an administrative hardship deferment to a borrower who is in repayment at the time of the natural disaster but who is unable to continue to repay the loan due to the disaster. Interest will accrue during any period of administrative hardship deferment. 34 CFR 674.37 requires that a borrower submit a written request for deferment. Under this administrative hardship deferment, a borrower may request this deferment orally and will not be required to submit a deferment documentation form to be considered eligible for this deferment. The administrative hardship deferment may be granted for a period of time not to exceed the earlier of either the date on which the borrower is able to resume making payments on the loan or June 30, 1995. Documentation must be maintained according to the governing regulations.

B. FSEOG Program

34 CFR 676.4 Allocation and Reallocation

For the 1994–95 award year, FSEOG funds returned by institutions from the 1993–94 award year will be reallocated to institutions that enroll students adversely affected by the 1994 California earthquake and submit applications in the format required by the Secretary. If the total funds requested exceed the total amount of funds available, the funds will then be reallocated on a *pro rata* basis only among these institutions to provide assistance to students whose financial need has increased as a result of the earthquake.

IV. 34 CFR Part 682—Federal Family Education Loan (FFEL) Program

A. 34 CFR 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

To assist affected individuals, the Secretary modifies the requirement in 34 CFR 682.604(c)(2) that loan proceeds be delivered to the borrower within 45 days of the institution's receipt of the check but will instead permit the institution to deliver loan proceeds to the borrower up to 120 days from the institution's receipt of the check. Documentation must be maintained according to the governing regulations. The Department still expects delivery of a borrower's loan proceeds as soon as possible.

Also, because some institutions may have to delay opening or have ceased operation for an undetermined period of time, the Secretary authorizes lenders not to disburse loan checks to institutions or to parent PLUS borrowers in the affected areas until the lenders receive revised disbursement schedules from the affected institutions. The Secretary instructs guaranty agencies and lenders to revise information on loan periods, graduation dates, and so forth, on the loan applications related to these disbursements as the information becomes available. This change means that a borrower need not reapply for the loan. This change also will allow a student to receive his or her loan proceeds according to a schedule that fits the institution's new academic schedule.

B. 34 CFR 682.605 Determining the Date of a Student's Withdrawal

The Secretary modifies the requirement in 34 CFR 682.605(b) to permit an institution affected by the

disaster to determine that the student has withdrawn within 90 days (instead of 45) after the expiration of the academic term for an institution that uses academic terms, except that 60 days (instead of 30) after the first day of the next scheduled term may be used in the case of a summer break, and 50 days (instead of 25) after the student's last date of attendance may be used for an institution that measures academic progress in clock hours or credit hours, but does not use a semester, trimester, or quarter system.

C. 34 CFR 682.607 Payment of a Refund to a Lender

The Secretary modifies the deadlines by which an affected institution shall pay a refund that is due to a lender, within 60 days after the student's withdrawal as determined under 34 CFR 682.605(b)(1)–(3) or within 30 days in the case of a student who does not return to the institution at the expiration of an approved leave of absence under 34 CFR 682.605(c). Instead, the Secretary will require the institution to pay a refund to the lender within 120 days (instead of 60) after the student's withdrawal or within 60 days (instead of 30) after the last day of the leave of absence.

D. 34 CFR 682.610 Records, Reports, and Inspection Requirements for Participating Schools

The Secretary modifies the deadline in 34 CFR 682.610(c) that an institution complete and submit required Student Status Confirmation Reports (SSCRs) to the Secretary or guaranty agency within 30 days of the institution's receipt of the report but will instead require completion and submission of these reports within 90 days. Reports of changes of borrower status if the institution does not expect to submit its next SSCR within the next 60 days may also be submitted within 90 days (instead of 30 days).

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the severe impact of the earthquake in California has caused a national emergency that has been recognized by the Congress. The Secretary, recognizing the severe devastation of the California earthquake victims, finds that soliciting further public comment with respect to this notice of relief from regulatory requirements is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12866

This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this notice are those resulting from statutory requirements and those determined necessary for providing emergency relief during a natural disaster. This notice provides relief from administrative burden associated with information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that this notice will not have a significant economic impact on a substantial number of small entities. The small entities affected by this notice are small institutions of postsecondary education. This notice provides temporary regulatory relief and will not increase institutions' workload or costs associated with administering the Title IV, HEA programs. It will therefore not have a significant economic impact on the entities affected.

Assessment of Educational Impact

The Secretary has determined that this document does not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.063 Federal Pell Grant Program; 84.268 Federal Direct Student Loan Program)

Dated: April 8, 1994.

Richard W. Riley,

Secretary of Education.

[FR Doc. 94–8889 Filed 4–12–94; 8:45 am]

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Wednesday
April 13, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 945 and 960

Designated Housing—Public Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 945 and 960

[Docket No. R–94–1694; FR–3425–F–02]

RIN 2577–AB27

Designated Housing—Public Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements section 622(a) of the Housing and Community Development Act of 1992. Section 622(a) provides public housing agencies (PHAs) with the option, subject to the requirements of this part, to designate public housing projects, or portions of public housing projects, for occupancy by disabled families; elderly families; or mixed populations (i.e., disabled families and elderly families).

This final rule also amends existing regulations, which currently provide for preference for elderly families and disabled families, and discretionary preference for near-elderly families in "public housing projects for the elderly"—that is, public housing projects that house mixed populations ("mixed population projects"). This final rule continues to provide for preference for disabled families and elderly families in "mixed population projects." However, certain amendments were made to include new and revised definitions pertaining to "family" as set forth in section 621 of the 1992 Act, and to provide for recognition of the designated housing process.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Director, Occupancy Division, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4206, Washington, DC 20410. Telephone number (202) 708–0744 (this is not a toll-free number). Hearing-impaired persons may contact these offices via TDD by calling (202) 708–9300 or 1-(800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—Proposed Rule

On January 7, 1994 (59 FR 1244), the Department published a proposed rule that would implement section 622(a) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (the 1992 Act). Section 622(a) amended section 7 of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437e) to provide public housing agencies (PHAs) [1] with the option, subject to certain requirements, to designate public housing projects, or portions of public housing projects for occupancy by (1) disabled families; (2) elderly families; or (3) mixed populations ("designated housing"). (Section 7 of the 1937 Act, previously titled "Congregate Housing" was retitled "Designated Housing" by the 1992 Act. Unless the context indicates otherwise, the references to section 7 in this preamble are to section 7 as amended by section 622(a) of the 1992 Act.)

The January 7, 1994 proposed rule incorporated the statutory requirements for obtaining approval to designate public housing for occupancy by disabled families or by elderly families, and supplemented the statutory requirements with regulatory ones. By the expiration of the public comment period on March 8, 1994, 101 comments were received. Approximately another 200 comments were received within the two weeks following the expiration of the public comment period. All comments timely submitted were reviewed and considered. In order not to delay final rulemaking on designated housing, the Department made every effort to review the 200 comments received after the close of the public comment period. The Department believes that the comments addressed in the preamble to this rule reflect the major concerns and issues raised by all commenters.

The commenters included housing authorities, associations representing housing authorities, elderly persons, organizations representing the interests of elderly persons, persons with disabilities, organizations representing persons with disabilities, State and local offices on aging, and State and local offices that address such matters as mental health, human services and rehabilitative services. The majority of the commenters were housing authorities.

A number of commenters expressed support for the Department's proposed implementation of section 622, and praised the Department's efforts to strike a balance between section 622 and the civil rights protections for persons with disabilities contained in the Fair Housing Act, section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. However, the majority of the commenters were highly critical of the proposed rule. While the commenters in favor of the proposed rule were primarily persons with disabilities, their advocacy organizations, and State and local offices that address disability issues, supporters of the proposed rule also included housing authorities. While the commenters opposed to the rule were predominantly housing authorities, associations representing housing authorities, elderly persons and their advocacy organizations, and State and local offices that address elderly issues, these commenters were joined by persons with disabilities and their advocacy organizations in voicing objections to sections of the proposed rule.

The provisions in the proposed rule that received the greatest criticism were those provisions that addressed the allocation plan and the supportive service plan requirements. The commenters stated that the Department made both plans unnecessarily complex and unduly burdensome, with the result being that it would be impossible for PHAs to obtain approval to designate housing for elderly families or disabled families.

The Department is appreciative of all comments submitted on the January 7, 1994 proposed rule. While many commenters simply expressed their general support or opposition to the proposed rule, other commenters carefully reviewed the rule, and offered detailed and helpful comments on regulatory implementation of section 622. The Department is aware that PHAs and other members of the public are anxious to have final regulations issued for section 622, and that the rulemaking process has taken longer than anticipated or desired. The Department believes, however, that this final rule, which takes into consideration public comment, improves the designated housing process and better serves PHAs and the families that they house.

II. Clarification of Relationship of Designated Housing Process to Statutes Prohibiting Nondiscrimination Against Elderly Persons or Persons With Disabilities

Certain questions and issues raised by a few commenters made the Department aware that there may be some misunderstanding about the obligations of PHAs that operate designated housing under statutes that contain civil rights

[1] Section 626 of the 1992 Act provides that the amendments made by subtitle B of title VI of the 1992 Act (which amendments pertain to the authority of PHAs to provide designated housing) shall not apply to lower income housing developed or operated pursuant to a contract between HUD and an Indian housing authority.

protections for elderly persons and persons with disabilities.

Notwithstanding the permissibility of PHAs to designate public housing projects for occupancy by elderly families or by disabled families, PHAs must comply with section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, the Age Discrimination Act, the Americans with Disabilities Act, and other applicable civil rights statutes and their implementing regulations. Section 622 does not alter the obligations and requirements imposed on PHAs by these statutes and their implementing regulations.

For example, a PHA may not deny an elderly person who also is a person with disabilities admission to a designated project for elderly families, in whole or in part, on the basis of the elderly person's disability. Similarly, a PHA may not deny a person with disabilities admission to a designated project for disabled families on the basis of the person's age.

The Department also notes that several commenters criticized the proposed rule on the basis that it appeared overly concerned with the housing needs of non-elderly disabled families. The Department does not believe that the concern for the housing needs for non-elderly disabled families as expressed in the proposed rule, and in this final rule, is unfounded or inconsistent with the statute.

The Department is aware, as was the Congress in enacting this legislation, that the majority of projects to be designated will be for elderly families, and the group that will be most affected by this designation will be non-elderly disabled families. Even without the requirement to submit a supportive service plan in addition to the allocation plan, persons with disabilities are not demanding their own separate housing projects as are elderly families. Thus, out of concern that non-elderly disabled persons may have public housing assistance reduced as a result of designation of projects for elderly families, the Congress requires in section 622 that a PHA, in planning how it will allocate its housing resources among the families that it serves, must secure additional housing resources "that will be sufficient to provide assistance to not less than the number of non-elderly disabled families that would have been housed if occupancy in such units were not restricted pursuant to this section." The proposed rule's concern, and that of this final rule, that persons with disabilities not be under-served by the designated housing process is not inconsistent with the statute.

III. Overview of the Final Rule

This section provides a summary of the significant changes made to the designated housing process by this final rule in response to public comment. This section also discusses those provisions of the proposed rule about which substantial comments were received requesting change, and for which the Department declined to adopt the recommended change.

Additional Housing Resources

Inclusion of Additional Housing Resources for Which PHAs "Plan To Apply"

The final rule revises §§ 945.103 and 945.203 which address additional housing resources. As revised, these sections provide that additional housing resources that a PHA may use to meet the housing needs of non-elderly disabled families who would have been housed in a project but for its designation as a project for elderly families include "housing resources for which the PHA plans to apply during the period covered by the allocation plan and that it has a reasonable expectation of obtaining."

The commenters on this provision are correct that the statute permits inclusion in the allocation plan of housing resources for which the PHA "plans to apply." The statute also provides that projections contained in the allocation plan must be "reasonable". Thus, in including in an allocation plan a description of those housing resources for which the PHA intends to apply, the PHA must have a reasonable expectation of obtaining these housing resources. Additionally, the time period within which the PHA plans to apply for additional housing resources should be limited, and the regulation limits the time period to that period covered by the allocation plan.

By "reasonable expectation of obtaining," the Department means that circumstances and factors relevant to the PHA's application for additional housing resources, indicate that the PHA has a reasonable chance to obtain these additional resources. For example, if the Department intends to make 3,000 units available on a competitive basis in a given region, and the PHA applies for 2,500 units, the chance that the PHA will be awarded 2,500 of the 3,000 units to be competitively distributed is not reasonable.

Commenters who requested the inclusion of "planned" housing resources in the allocation plan noted that these housing resources can be further addressed in the biennial updates of the allocation plan. For example, if a PHA relies upon using housing resources for which it intends to apply, and subsequently fails to apply for the housing resources, or applies but was unsuccessful in obtaining the additional housing resources, the PHA must account for the lack of the additional housing resources in the biennial update of the allocation plan. Depending upon the reasons that the "planned" additional housing resources were not obtained, the Department can take appropriate action, including changes in the designation of the project, or require the PHA to take appropriate action at the time of review of the biennial update.

Additional Housing Resources Must Be Those Owned or Controlled, or To Be Owned or Controlled by PHAs

The Department did not adopt the suggestion of several commenters that the final rule include housing resources owned by other entities that are willing to work in conjunction with the PHA. As noted above, the statute is clear that the housing resources to be addressed in the allocation plan are those that a PHA owns or controls, or will eventually own or control. Section 622 provides that a PHA must have "a plan for securing sufficient additional resources that the agency owns, controls, or has received preliminary notification that it will obtain, or for which the agency plans to apply * * *."

Revision to List of Examples of Additional Housing Resources for Persons With Disabilities

The final rule removes the majority of the examples of additional housing resources that a PHA could utilize to provide housing assistance to the non-elderly disabled persons that would have been housed in a project were it not for designation of the project as a project for elderly families. On further consideration, the examples of additional housing resources, which did not constitute an all inclusive list, are more appropriately included in a notice or Handbook. The final rule retains examples of those additional housing resources that will probably be utilized by the majority of PHAs as additional housing resources.

For the benefit of commenters who found the list helpful, the possible options for additional housing resources for persons with disabilities include but are not limited to the following:

(1) Normal turn-over of units in existing projects;

(2) Providing local preferences for a specific number of non-elderly disabled persons for a specific general occupancy project or projects, in accordance with

the preference provisions of 24 CFR 960.211; for mixed population projects, as provided in 24 CFR part 960, subpart D; or for section 8 certificates and vouchers. Within the context of the PHA's overall preference system, there must be a demonstration that the preference will result in the desired increase in the number of non-elderly disabled persons housed;

(3) Convert a project that currently houses mixed populations to general occupancy project, which provide a more integrated setting;

(4) Allocation of a certain number of existing or new public housing units or section 8 certificates or vouchers, which will be accompanied by a supportive services package, which may be achieved by the PHA entering into an agreement with a supportive service provider to make these units or certificates or vouchers available in exchange for the provider delivering supportive services to disabled families. Clients of the service provider delivering the supportive services may not be provided these units or certificates or vouchers before other non-elderly disabled families already in occupancy or on the PHA's waiting list;

(5) Use of modernization funds to reconfigure units and buildings to appropriate sizes or uses for non-elderly disabled families;

(6) Designation of projects for occupancy only by disabled families (projects designated for occupancy by disabled families must have a supportive service plan in accordance with the requirements of § 945.205);

(7) Allocation to non-elderly disabled families of units in other projects owned or controlled by the PHA that will be vacated by elderly families who will relocate to the project designated for occupancy by elderly families;

(8) Use of public housing development funds, or funds appropriated for major reconstruction of obsolete public housing to provide housing for disabled families;

(9) Use of all or a portion of net increases in units available for occupancy in a project as a result of the rehabilitation of vacant units in this project which had been uninhabitable.

Projects Subject to the Requirements of Part 945

Clarification of Exemption From Designation Requirements for Mixed Population Projects Under Part 960

The majority of commenters understood that a PHA with a project that houses a mixed population of elderly families and disabled families ("mixed population project"), and that intends to continue to house a mixed population of elderly families and disabled families, is *not* required to comply with the designation requirements of new part 945. Other commenters stated that the proposed rule was not clear whether mixed population projects were required to comply with the part 945 designation requirements.

The final rule includes additional language to clarify that mixed population projects are exempt from the designation requirements of part 945. The final rule also clarifies that the fact that a mixed population project houses persons with disabilities does not require a supportive service plan, as does a project that is designated for occupancy by disabled families under part 945.

Supportive Services Required Only for Designated Housing for Disabled Families

Several commenters expressed confusion about when supportive services are required by the designated housing process. PHAs are required by statute, and by this regulation, to provide or obtain supportive services only for projects designated for occupancy by disabled families. However, in designating a project for elderly families, the PHA must consider the needs of non-elderly disabled applicants for services currently provided in the project to be designated for elderly families.

Section 7(d) provides, in relevant part, that "in designing, developing, otherwise acquiring and operating, designating and providing housing and assistance under this title, each public housing agency shall meet to the extent practicable, the housing and service needs of eligible families applying for assistance under this title as provided in any allocation plan of the agency approved under subsection (f)."

In an effort to reflect "the extent practicable" language of section 7(d), § 945.103 of the proposed rule contained a paragraph (paragraph (d)) which stated that the requirements of § 945.205 to submit a supportive service plan for approval to designate public housing for disabled families was not to be construed to mean that PHAs may provide supportive services only to those disabled families occupying designated housing for disabled families.

The purpose of paragraph (d) in § 945.103 was to encourage PHAs that may be currently providing supportive services to elderly families occupying public housing to continue to provide those services. The fact that a PHA may be able to deliver supportive services, or is currently delivering supportive services to elderly families, or to disabled families not occupying a designated project does not bring the PHA within the scope of the requirements of part 945.

Because of the confusion over this issue expressed by a number of commenters, the final rule removes paragraph (d) in § 945.103 from the final rule. The Department, however, continues to encourage PHAs to meet to the extent practicable the housing and supportive service needs of all eligible families applying for assistance.

New and Revised Definitions

Defining "Mixed Population Project"

The final rule provides a definition for "mixed population project." "Mixed population project" is defined to mean a public housing project reserved for occupancy by elderly families and disabled families. As discussed in the preceding section, these projects are not required to meet the designation requirements of part 945, but must be reserved for occupancy by elderly families and disabled families in accordance with the requirements of 24 CFR part 960.

Revising the Definitions for the Various Categories of "Families"

The final rule also introduces a new term to clarify the specific category of families under discussion. Instead of referring frequently, and awkwardly, as was done in the proposed rule to "families who are members of the group for whom the project is to be designated for occupancy," the final rule uses the term "designated family."

"Designated family" is defined to mean the category of families for whom a project has been designated. Depending upon the designation to be made, designated families will be either elderly families or disabled families.

The final rule provides, as did the proposed rule, definitions for the statutory terms "families," "elderly families," "disabled families," and "near-elderly families," but the final rule defines these terms in their singular context rather than the plural context. Additionally, the final rule makes some clarifying changes to these definitions.

"Elderly family" is defined to clarify that an elderly family may include one or more elderly persons with disabilities, and members of the family who are not elderly.

"Near-elderly family" is defined to clarify that a near-elderly family may include one or more near-elderly persons with disabilities, and members of the family who are not near-elderly.

"Disabled family" is revised to clarify that this term includes a person with disabilities who is also elderly or near-elderly. An elderly person with disabilities would be eligible to reside in a designated project-disabled, designated project-elderly, or a mixed population project, subject, of course, to availability of units in these projects, and the person's place on the waiting list.

As noted in the preamble to the January 7, 1994 proposed rule, the definitions for "family," "elderly family," and related terms are currently contained in 24 CFR part 912, entitled "Definition of Family and Other Related Terms; Occupancy by Single Persons." Part 912, however, has not yet been amended to reflect the revised definitions provided by section 621 or to add the new terms defined in section 621. Under separate final rulemaking, part 912 will be amended to include several of the revised and new definitions set forth in section 621 (and which are included in this final rule). When the part 912 rule is published in final, the Department will amend the regulations in part 945 to remove the definitions from part 945 and to cross-reference to the definitions in part 912. The advantage in keeping these definitions in part 912 (which was established to define "family" and related terms) is that part 912 offers a convenient location to place the definitions for terms that are applicable to all public housing programs.

Revised Definition of "Service Provider"

In response to the many public comments that objected to the "licensing requirement" for service providers, the final rule revises the definition of "service provider" to remove the requirement that the service provider must be licensed under State or local law. In lieu of this requirement, the final rule provides that the service provider be "qualified and experienced" in the provision of supportive services. "Qualified" means that if the type of supportive services to be delivered by the service provider requires a State or local license, the service provider must be in compliance with these laws.

Revised Definition of Supportive Services

In response to public comment, specifically by persons with disabilities, the definition of "supportive services" is revised to clarify that this term refers to non-housing services available to persons residing in a development for which there is a need and demand by disabled families. The qualifier of "non-housing" before the word "services" is to clarify that supportive services do not include plumbing, minor repair and maintenance of dwelling units that the housing authority is required to provide under the lease. The provision of supportive services in a designated project does not relieve the PHA of its obligation to provide similar services in other developments for persons with disabilities as required by 24 CFR part 8.

The inclusion of the phrase "for which there is a need and demand" is to emphasize that PHAs should not designate public housing projects for occupancy by disabled families unless the disabled families served by the PHA and to whom the PHA intends to offer occupancy in the designated project clearly indicate a need and demand for the proposed supportive services. The consensus among commenters who indicated that they were persons with disabilities or who represented the interests of persons with disabilities was that designated housing for disabled families is not the preferred residential setting of persons with disabilities.

Allocation Plan—Development and Contents

The final rule significantly consolidates and streamlines the information required to be included in the allocation plan, without, however, reducing information necessary to determine the possible adverse impact that the designation process may have on elderly families or disabled families, particularly non-elderly disabled families.

Removal of Allocation Plan Objectives

Section 945.203(a)(2) of the proposed rule contained language that encouraged PHAs, in developing their allocation plan to strive to provide, regardless of the designation to be made, as broad a range of housing choice as possible to elderly families and disabled families with respect to the level of supportive services, and availability of accessible units. Additionally, this section stated that PHAs should strive to provide, regardless of the designation to be made, housing for disabled families in the most integrated setting possible.

Several commenters stated that although these objectives are laudable, their inclusion in a regulation is inappropriate, and at variance with the statutory requirements. Other commenters stated that the inclusion of these objectives in the rule added to the complexity of the rule because it was unclear whether these objectives were intended to be advisory or mandatory, and it was unclear whether a PHA could designate a project for elderly families if these objectives were not met. A few commenters stated that the final rule should be revised to require compliance with these objectives.

The objectives listed in § 945.293(a)(2) of the proposed rule are advisory and not mandatory. The Department agrees with the commenters that these objectives are laudable, but acknowledges that these objectives are just that—"objectives" and not "requirements". Accordingly, to comply with the statute and minimize confusion concerning what is required to be addressed in the plan, and what is not, the final rule removes these objectives from the regulation. The Department is confident that without the regulatory reminder, PHAs will strive to meet these objectives. The Department's confidence is based in part on the improved public participation procedures for allocation plan development required by this final rule, and which are discussed below. The Department believes that these procedures will provide PHAs with valuable input on proposed allocation plans, including any possible problems, and options for expanding housing choice and creating integrated settings.

Revised Consultation Procedures for the Plan Development

A number of commenters criticized the "public consultation process" of the proposed rule on the basis that the rule simply mirrored the statutory language, and failed to provide adequate guidance on the extent of consultation involved. The Department found merit in the commenters' criticism and the final rule provides for a two-stage consultation process.

The first consultation occurs at the pre-plan development stage, and the final rule specifies the parties that must be consulted at a minimum. The second consultation occurs after plan development, but before submission of the plan to the Department. The final rule requires the PHA to provide for review and comment on the allocation plan by all members of the public. This two-stage consultation process was recommended by several commenters.

For the first stage of the consultation process, the final rule requires the PHA to consult with the State or unit of general local government where the project is located. (In response to public comment the phrase "where the project was located" was changed from the proposed rule phrase of "in whose jurisdiction the area served by the PHA is located.") The final rule also provides for PHAs to consult with representative advocacy groups, where these groups exist, for each of the following

categories of families: Disabled families, elderly families and families with children. The final rule establishes consultation with public housing residents (again in the pre-plan development stage) by requiring consultation with the representatives of the residents of the buildings proposed for designation, as a minimum requirement.

For the second stage of the consultation process, the final rule provides for public participation review and comment on the plan. The commenters stated that this type of public participation process would provide all families affected by the designation with the opportunity to express their support, voice their objections, and offer comments on the proposed allocation plan. The Department agrees with the commenters, and the final rule requires that following completion of the draft allocation plan (and the draft of any update of the allocation plan) the PHA shall:

(1) Issue public notices regarding its intent to create designated housing and the availability of the draft allocation plan;

(2) Contact those parties, with whom the PHA is required by regulation to consult, and other individuals and agencies that expressed an interest in the PHA's plan;

(3) Allow not less than 30 days for public comment on the draft allocation plan;

(4) Make free copies of the draft allocation plan available upon request and in accessible format, when appropriate; and

(5) Conduct at least one public meeting on the draft allocation plan.

The requirement to consult with certain groups and individuals, and the requirement to provide public participation in the development of the allocation plan is to assist the PHA in better identifying issues, problems, and benefits involved in the proposed action. However, the final decision concerning the project to be designated, and how the PHA proposes to allocate its available housing resources rests with the PHA.

Submission of Summary of Comments, and Not Transcripts

The final rule continues to allow PHAs to submit a summary of comments received on the allocation plan. A few commenters stated that submission of a summary of the comments is in conflict with the statutory requirement.

The statute provides, in relevant part, that the allocation plan shall include "any comments of agencies, organizations or persons with whom the PHA consults." The Department believes that the statutory language is sufficiently broad to permit submission of a summary of the comments received on the allocation plan. The PHA must maintain the original comments on file, and must make these comments available for inspection by the Department and the public.

Other commenters stated that the proposed rule was unclear whether transcripts of meetings were required, and if transcripts were required, the commenters stated that this requirement is too burdensome. In referring to transcripts of meetings in the proposed rule, the Department did not intend to require a transcript of a meeting. Rather, the proposed rule intended to require retention of a transcript if a PHA decided to have a transcript made of a meeting. The final rule, however, removes all references to meeting transcripts. If taken, the PHA should maintain the transcript on file, together with comments received on the allocation plan, to be made available for inspection by the public. Comments made at a meeting by members of the public should be included in the summary of comments.

Retention of Five Year Recordkeeping Requirement for Comments

Several comments complained that the five year recordkeeping requirement for the retention of comments submitted on the allocation plan was too lengthy a period. The commenters suggested that a two-year retention period should be sufficient.

The Department disagrees with the commenters. PHAs should maintain the original comments received on the allocation plan to cover at least two biennial updates. The Department believes that the five-year record retention period is in the best interest of PHAs, and is not unduly burdensome.

Removal of Requirement To Discuss Advantages and Disadvantages of Designation

The final rule removes the requirement for the PHA to address in the allocation plan the advantages and disadvantages that the choice of designation is expected to have on families served by the PHA. The Department agrees with the commenters that the advantages and disadvantages should be apparent by the information provided in the allocation plan.

Retention of Requirement To Document the Number of Families Who Will Be Denied or Delayed Housing

A few commenters requested that the final rule not include the statutory requirements for PHAs to "document the number and duration of instances in which housing assistance for eligible applicants will be denied or delayed by the agency because of a lack of appropriately designated units." The Department declines to remove this requirement from the rule because it is a statutory requirement.

Clarification That Delays of Concern Are Those That Are Caused by the Designation Process

In response to public comment, the final rule clarifies that the denial of or delay in housing assistance with which the Department is concerned in part 945 is that which results from the designation of project. Delays that are caused by matters unrelated to the designation process are not those that will result in re-evaluation of the appropriateness of a PHA's designation of a project. For example, as one commenter noted, some PHAs have very low turn-over in their projects that results in denial of or delay in housing assistance that is unrelated to the designation process. Also, a PHA that implements stricter screening procedures can be expected to have an increased rate of denial of housing assistance among all applicants.

Determining the Extent of Denial of or Delay in Housing Assistance

Several commenters indicated that they were uncertain what the statute meant by "excessive," and requested the Department define "excessive" in terms of a number or percentage. Instead of defining this term, the Department has replaced "excessive" with "substantial."

As discussed in the previous section, there may be a variety of circumstances having nothing to do with the designation of housing that may give rise to delays in housing assistance. The Department is interested in knowing whether the designation of project under part 945 is causing a denial of or delay in housing assistance for a substantial number of tenants. That is, has the number of applicants denied housing assistance increased as a result of the designation, or (or perhaps also) has there been an increase (a lengthening) in the duration of time an applicant must wait for housing assistance as a result of the designation.

Revision to Requirement To Maintain Access to Similar Services and Housing Facilities

The proposed rule required PHAs to describe the steps to be taken to ensure that disabled families (if a project was to be designated for elderly families) and elderly families (if a project was to be designated for disabled families) maintain access to services and housing facilities similar to those that otherwise would have been available to them at the project if the project had not been designated.

A number of commenters objected to this requirement on the basis that the regulatory language was too broad, and it would be impossible for PHAs to guarantee similar access to all services and amenities available to them before designation. The Department agrees with the commenters, and has revised this section of the allocation plan. The rule now requires PHAs to describe the steps taken to facilitate access to supportive services provided by other agencies at the designated project.

This section, however, imposes an affirmative duty on a PHA to fund at least the same level of supportive services needed and requested by non-elderly disabled families that the PHA funds for elderly families in the designated project.

Revision to Requirement Concerning Accessible Units

The proposed rule required the PHA to describe the steps to be taken to replace any accessible units that will be unavailable as a result of the designation. A few commenters noted that PHAs are already mandated by section 504 to assess and provide for accessibility needs, and recommended this provision refer to the PHA's obligations under section 504 obligations.

The Department agrees, and final rule requires the PHA to describe the steps taken by the PHA to affirmatively meet its obligations under 24 CFR part 8 to respond to any need for accessible units that will no longer be available to applicants who need these units.

Removal of Requirement To Provide Information on Existing Occupancy Policy and Procedures

The final rule also removes the requirement for the PHA to provide information on the PHA's existing occupancy policies and procedures, and to include a description of the PHA's HUD-approved Tenant Selection and Assignment Plan. With respect to the PHA's admission policies and procedures, the final rule requires the PHA to describe any changes the PHA intends to make in its admission policies to accommodate the proposed designation.

Allocation Plan Approval or Disapproval

Approval of Plan Because of HUD Failure To Respond Within Timeframes

The final rule clarifies that if HUD fails to approve or disapprove an allocation plan within the timeframes imposed by statute, and set forth in this regulation, an allocation plan will be considered approved.

Time Limits on Resubmission of Disapproved Allocation Plans

The proposed rule provided that if the Department disapproves an initial allocation plan, a PHA shall have a period of not less than 45 days following notification of disapproval to submit amendments to the plan, or to submit a revised plan. "A period of not less than 45 days" is the language used in the statute. A few commenters read this provision to mean that only 45 days would be permitted. Other commenters requested that there be no time limitation imposed on the resubmission of an allocation plan.

The final rule continues to provide PHAs, consistent with the statute, with a period of at least 45 days to submit amendments to the plan or to submit a revised plan. The Department, however, declines to adopt the suggestion of some commenters that there be no time limitation on submission of a revised plan. In fact, on further consideration, the Department has decided to impose a maximum time limit on when a disapproved plan may be resubmitted. The Department believes that the passage of a substantial period of time may affect the data originally reported in the allocation plan, and may make it necessary for the PHA to hold another public meeting. Accordingly, the final rule provides that PHAs will have a period of no less than 45 days, and no more than 90 to resubmit an initial allocation plan originally disapproved.

The Department believes that 90 days represents a reasonable maximum period within which to submit a revised plan. An allocation plan that may require more than 90 days to make it an approvable plan, in all likelihood, indicates serious underlying problems with the plan. Accordingly, the PHA and the families that it houses are better served by restarting the allocation plan development process.

The Department declines to apply, as one commenter suggested, one time limit to all revised plans. Some revisions required of allocation plans may take minimal time on the part of the PHA, and therefore 45 days will be sufficient, while other revisions may require use of the longer 90-day period.

Designated Housing for Disabled Families

The final rule makes several changes to § 945.205 that addresses the supportive service plan component for obtaining approval to designate projects for disabled families. To obtain approval to designate a project for disabled families, section 622 requires submission of an allocation plan and a supportive service plan.

Supportive Service Plan Is Statutory Requirement

Many commenters objected to the requirement to submit a supportive service plan in order to obtain approval for designated housing for disabled families. The commenters stated that it is not only unfair to disabled families, it is unfair to PHAs. Several commenters stated that this requirement reinforces the stereotype that persons with disabilities have special needs and are incapable of living independently. Other commenters stated that if the supportive service plan is going to be required for housing for disabled families, it also should be required for housing for elderly families.

The requirement to submit a supportive service plan for designated housing for disabled families is a statutory requirement, not a regulatory one. However, the Department has made changes to this provision of the final rule with the intention of minimizing the administrative burden, and with the intention of clarifying when this type of housing should be considered as an alternative housing for persons with disabilities.

Demonstrated Need and Demand for This Housing

The final rule provides that HUD will approve designation of a project for disabled families only where there is a clear demonstration of both a need and demand for such designation, and in the absence of such demonstrated need and demand, PHAs should provide for the housing needs of disabled families in the most integrated setting possible. The inclusion of a demonstration or evidence that there is a clear need and demand for housing that is limited to persons with disabilities is in response to commenters from the disability community who stressed that this type of housing should not be the automatic alternative to designated housing for elderly families.

Admission to Designated Projects for Disabled Families Need Not Be Based on Need for Services

Although the designation of a project for disabled families should arise only where there is a real need and demand for this type of housing (i.e., where persons with disabilities express the need or demand for the services to be provided) once the project is established, admission to this project is not to be conditioned on a person with disabilities needing or opting for the service. A person with disabilities who chooses to reside in this project, and is next on the waiting list, should not be denied occupancy because the person does not need or have any interest in using the services to be provided to this project.

Non-Contiguous Units Encouraged but Not Required

A few commenters objected to the proposed rule's implied prohibition against designating contiguous units. Designation of contiguous units is, by no means, prohibited by this final rule.

The Department recognizes that where projects are designated for occupancy by elderly families, the units or floors designated will, in all likelihood, be contiguous, reflecting the preference of elderly families to reside in proximity to one another. As stated earlier in this preamble, the preference of the persons with disabilities who commented on this rule is to reside in an integrated setting, and not be limited to projects that house only disabled families, or that house only disabled families and elderly families. Thus, the reference to non-contiguous units in the regulation is to encourage PHAs to consider more integrated settings for persons with disabilities.

Clarification of When Service Provider Must Be Licensed

As discussed earlier in this preamble, the final rule removes the requirement that service providers must be licensed, unless licensing for the type of service to be provided is required by State or local law.

Consultation Procedures for Supportive Service Plan

The final rule provides the same consultation process for the supportive service plan that is required of the allocation plan. For PHAs that intend to designate a project for disabled families the consultation process for the supportive service plan may be performed concurrently with the allocation plan.

IV. Discussion of Public Comments

Many of the issues raised by commenters have been addressed in section III of this preamble, which provided a summary of the principal features of the designated housing process as implemented by this final rule. Therefore, these issues are not re-addressed in this section. This section discusses additional issues raised by the commenters, and the Department's response to these issues. These comments may or may not have prompted additional, but less significant, changes to the rule. The comments are discussed in the context of the particular subpart or section of the rule to which they pertain.

In addition to not discussing issues already addressed in section III of the preamble, the following does not discuss comments that were either generally laudatory or generally critical of the proposed rule, either of style or substantive comment, or that offered editorial suggestions, or suggestions regarding format that would not affect the meaning of the regulatory provisions.

Section 945.105 Definitions

Comment: Two commenters recommended that the definition of "persons with disabilities" be revised to eliminate the implication that these persons must have multiple disabilities to qualify as a "person with disabilities." Their suggested term was "person with one or more disabilities."

Response: The term "person with disabilities" is the term used in section 622, and is also the term used in the Americans with Disabilities Act (ADA) (although, as discussed in the next response, the definition for this term is not identical in section 622 and the ADA). The Department believes that the definition for this term makes clear that to qualify as a person with disabilities, the individual need not have more than one disability.

Comment: Two commenters stated that the definition of "person with disabilities" should be revised to conform to the definition provided in the Americans with Disabilities Act.

Response: The definitions for the various categories of "persons" and "families" used in section 622 of the 1992 Act, are provided in section 621 of the 1992 Act. The final rule reflects the definition for "person with disabilities" set forth in section 621. Additionally, neither the Americans with Disabilities Act or section 504 of the Rehabilitation Act of 1973 amended the U.S. Housing Act of 1937 to replace the 1937 Act's definition of "persons with disabilities."

Comment: One commenter stated that the age distinction for "near-elderly person" is too low and should be raised to 55. Two commenters stated that the definition of "disabled families" should include an age restriction, such as 55 or 50 years of age. Another commenter stated that the definition of "elderly family" should exclude any child under the age of 55.

Response: The statute defines all of these terms ("near-elderly person," "disabled family" and "elderly family") and the Department is without authority to adopt the recommendations made by these commenters.

Section 621 defines "near-elderly person" as a person who is at least 50 years of age, but below the age of 62.

The statute does not provide for an age restriction in the definition of "disabled family" nor does it exclude as an "elderly family" a family with children who are neither elderly or near-elderly. In fact in the final rule, the definition of "disabled family" rule clarifies that this term includes persons and other members of the family who may be elderly, near-elderly, or who are neither elderly, or near-elderly. The definition of "elderly family" clarifies that this term includes persons and other members of the family who may be persons with disabilities or who are neither elderly nor near-elderly.

Comment: One commenter requested that the Department provide a definition for "accessible" when used in the context of a dwelling unit.

Response: The definition section of the final rule includes a definition for "accessible unit." The final rule provides that the term "accessible unit" has the meaning given this term under the second definition of "accessible" in 24 CFR 8.3, which is a definition familiar to PHAs.

Section 945.203 Allocation plan

Comment: Two commenters requested that the final rule require PHAs to explain the methods used in arriving at information required by the allocation plan.

Response: The Department declines to impose this requirement on PHAs. Much of the information required by the allocation plan will be derived from the PHA's waiting list, or from the locality's CHAS, or other local housing needs survey. Members of the public that may be interested in determining how a PHA arrived at the information disclosed in its allocation plan may inquire about this at the public meeting to be held on the allocation plan. Some of the information will be derived from the PHA's self-evaluation under section 504.

Comment: Several commenters supported the use of the CHAS as a source of information required to be included in the allocation plan, but other commenters stated that the CHAS is not a useful source of information or is not required in their jurisdictions.

Response: The statute specifically includes the CHAS as a source of data for the allocation plan. For localities where there is no CHAS, the final rule provides for use of any other local housing needs survey.

Comment: One commenter stated that in determining additional housing resources that are needed to house non-elderly disabled persons, the rule should clearly state that if the same number of units would be offered to the applicant group not allowed in designated units, as would have been offered before the designation, then no new units are needed.

Response: The Department believes that this point need not be explicitly stated in the rule. The statute and this final rule require the PHA to disclose its plan for securing additional housing resources that will be sufficient to provide assistance to not less than the number of non-elderly disabled families that would have been housed but for the designation. If the PHA has the "additional" housing resources on hand, and need not secure other housing resources, then this is what the PHA will state in its allocation plan.

Comment: One commenter stated that it was trivial for the Department to require the PHA to describe any incentives offered to implement voluntary transfers to achieve the objectives of the designation.

Response: The Department is interested in how a PHA is successful in motivating families to move to a designated project, or motivating families to move from a project proposed to be designated. Additionally, the information provided by PHAs on this matter may be useful to other PHAs.

Comment: Many comments were received on the types of additional housing resources to be provided to non-elderly disabled families. Persons within the disability community were divided on what constitutes acceptable additional housing resources. Some commenters stated that section 8 certificates and vouchers were not suitable housing resources for persons with disabilities. The majority of individual commenters (as opposed to advocacy organizations) requested the use of more section 8 certificates and vouchers for persons with disabilities. Other commenters stated that replacing public housing units with residency in a group home, or shared housing is not comparable to residency in a private apartment and should not be acceptable.

Response: The statute provides for consideration of a variety of alternative housing resources for non-elderly disabled families, including section 8 certificates and vouchers, mixed housing, congregate housing, shared housing, and group homes. Accordingly, the Department cannot exclude consideration of use of these types of housing assistance by regulation. The final rule, however, provides for greater public input in the allocation plan than did the proposed rule. This provides an opportunity for persons with disabilities, and their representatives, to voice their objections, if any, to the additional housing resources for non-elderly disabled families proposed to be used by the PHA. The Department will look very carefully at any plan about which there were strong objections raised by persons with disabilities.

Comment: A few commenters asked how the allocation plan is to indicate that it gave fair consideration of comments received on the allocation plan.

Response: The PHA should explain how it did or did not revise its plan in response to public comment. Generally, the Department will be interested in a PHA's response to substantial negative comment on a proposed allocation plan.

Comment: Three commenters objected to the fact that the proposed rule did not include a list of various housing options for elderly families.

Response: As noted earlier in this preamble, the Congress and the Department anticipate that most, if not all, allocation plans will provide for designation of public housing projects for occupancy by elderly families. This is why the statute specifically requires PHAs to address housing resources that will be available for non-elderly disabled families. In the event a PHA designates a project for occupancy by disabled families, and the designation will result in denial of or delay in housing assistance to elderly families, then the PHA must address this issue in its allocation plan.

Comment: Nine commenters stated that approval or disapproval of an allocation plan should be based only on the statutory requirements. Another commenter stated that the only basis for disapproval should be an indication that there will be disparate waiting times for groups waiting to be housed. Three commenters stated that the rule should make clear that the Department will not approve an allocation plan which fails to promote fair housing or which is submitted by a PHA for which there is documented history of discrimination against various types of families.

Response: The Department has made only a few editorial changes to § 945.203(d) which addresses the allocation plan approval criteria. This section tracks the statutory language. The statute provides that the allocation plan shall be approved if the Department determines that based on the plan "and the comments submitted on the plan"—"the information contained in the plan is complete and accurate and the projections are reasonable, implementation of the plan will not result in excessive vacancy rates, and the plan (as described in the statute) can reasonably be achieved." The fact that the approval section of the regulation may focus on particular information to be contained in the plan (and the completeness and accuracy of this information), or emphasize the reasonableness of certain projections to be made does not mean that the Department has departed from the statutory approval criteria.

Comment: One commenter suggested that the final rule require that a PHA whose plan has been disapproved by the Department, must undergo public review and comment before resubmission of the plan to the Department.

Response: As discussed in section III of this preamble, the Department shared the concern expressed by the commenter, and has revised the provision in the rule that addresses when a revised plan may be submitted. The rule now provides that if a revised plan is submitted within the period set by the Department which will be no less than 45 days, but no more than 90 days, the PHA need not undergo a second consultation process. However, after 90 days, the Department is concerned that factors and data may have changed that will affect families served by the PHA, and that therefore make it necessary for the PHA to once again invite public review and comment. Accordingly, the Department established a maximum time limit of 90 days.

Comment: Three commenters requested that the final rule provide for PHAs to follow the same public participation requirements on updated plans that govern the initial plans.

Response: The final rule imposes (as did the proposed rule) the same public participation requirements on updated plans, as imposed on initial allocation plans. This is a statutory requirement. Section 622 provides that "in preparing the initial allocation plan, *or updates of a plan*, for submission under this section, a public housing agency shall consult with * * *."

Comment: Three commenters stated that the requirement to submit updated allocation plans every two years is burdensome.

Response: The requirement to submit biennial updates is a statutory requirement.

Comment: Two commenters stated that the Department exceeds its statutory authority in providing that projects for which updated plans were disapproved will revert to occupancy status before designation.

Response: The Department disagrees with the commenter. The Congress would not have required PHAs to submit updated plans every two years if the Congress were not concerned that there may be instances in which designated housing is a failure. That is, the Congress was concerned that the number of families who have been denied housing assistance, or the delay in providing housing assistance has increased substantially as a result of designated housing, to cite two examples of concern. If one of these consequences were to occur, the Department cannot permit the PHA to continue to operate designated housing for which the impact is adverse for a substantial number of families or a protected class of families. However, the Department has revised the final rule to clarify that disapproval of the updated plan will not result in automatic reversal of a designated project to its predesignation occupancy status. As with the initial allocation plan, there may be factors that a PHA can, and is willing to change, that will correct the situation and minimize the adverse impact of the designated housing process on the families served by the PHA.

Section 945.205 Designated housing for disabled families

Comment: One commenter stated that the two year commitment for a service provider may be in violation of some State laws that permit only one-year contracts.

Response: The Department is sympathetic to this situation. However, the statute requires that a designated project for disabled families cannot be approved without a supportive service plan. The Department must have some assurance that if it approves the designated project for disabled families, the supportive services will remain in place at least until the PHA submits its updated allocation plan.

Comment: Nine commenters stated that it will be difficult if not impossible to identify the supportive service needs of disabled families. These commenters stated that HUD must keep in mind that PHAs can no longer require disclosure of specific disabling conditions.

Response: The Department recognizes the difficulties for PHAs to identify the specific disabling condition of persons with disabilities, and the designated housing process does not impose this type of investigation on PHAs. The designated housing process, as implemented by this final rule, intends for PHAs to informally survey residents and potential residents about service needs and desires. The Department's experience, generally, is that the public is not shy about expressing needs and desires. From this survey, the PHA should be able to determine the services that residents actually need and demand, and those that the PHA believes that it can reasonably provide.

Comment: Two commenters stated that the PHA should be required to document the need for specific supportive services it intends to provide.

Response: As discussed in Section III of the preamble, the revisions made to the approval process for designated housing for disabled families impose this type of requirement. The final rule provides that designated housing for disabled families will be approved if the allocation plan meets the requirements of § 945.203 and demonstrates both a need and a demand for designated housing for disabled families. The need and demand will be based on the information provided in the supportive service plan that will (or should) evidence the need and demand for the services to be provided to families occupying this project.

Comment: Six commenters stated that the final rule should provide that supportive services not be linked to a project, but must be portable.

Response: For designated housing for disabled families, the supportive services are project specific. (However, the units in the project that constitute the designated housing need not be contiguous; and the Department encourages non-contiguous units.) The project specific aspect recognizes that if projects are designated for disabled families the designation in itself establishes "separate housing" for the designated families, even if non-contiguous units comprise the designated housing. Whenever the PHA undertakes designation of a project for disabled families, the Department wants assurance that there are sufficient numbers of persons with disabilities who are current tenants or applicants on the waiting list who express a need and demand for housing that provides supportive services (i.e., designated housing for disabled families).

Comment: Eleven commenters stated that the rule must clarify that designated projects for disabled families are also available to persons not needing, or opting for supportive services.

Response: As discussed in section III of the preamble, the final rule makes this clarification.

Comment: One commenter stated that the final rule should require PHAs to determine which disabled families will occupy designated housing for disabled families.

Response: The final rule requires PHAs, as part of the approval process for designated housing for disabled families, to demonstrate the need and demand for this type of housing. The Department believes that this requirement will address the concern expressed by the commenter.

Comment: Seven commenters requested that the final rule clarify what is meant by residential supervision. The commenters stated that they did not want PHAs to use residential supervision to provide a more restrictive type of public housing for persons with disabilities.

Response: "Residential supervision" refers to the assistance provided by a person or persons who either lives at the designated project for disabled families, or makes himself or herself available to persons with disabilities who may need assistance on a 24-hour or on-call basis. Generally, residential supervision assistance is provided to persons who, as a result of seizures or paralysis, for example, may need assistance to be provided on a flexible basis (e.g., on-call) and to be available within proximity to where the person resides. The specific need for residential supervision must be documented in the supportive service plan.

Section 945.303 Requirements governing occupancy in designated housing

Comment: One commenter requested that the final rule contain regulations to permit expedited removal of disruptive tenants.

Response: The Department's regulations in 24 CFR part 966, governing lease and grievance procedures in public housing, already address this issue.

Section 945.301 Operating designated housing

Comment: Two commenters stated that the requirement to operate designated housing in conformance with civil rights laws should be extended to the allocation plan development stages

Response: The Department agrees with this comment, and this section of the final rule provides that "the application procedures and operation of designated projects" shall be in conformity with the applicable civil rights and nondiscrimination statutes. Conformity with applicable civil rights and nondiscrimination statutes includes submission of the needs assessment and transition plan required by 24 CFR 8.25.

Part 960, Subpart D—Preference for Disabled Families and Elderly Families in Public Housing Projects for Disabled Families and Elderly Families

Comment: One commenter stated that the proposed rule did not make clear that elderly housing under part 960 is not the same as elderly housing under part 945.

Response: The Department believes that the editorial changes made to part 960 in the final rule clarify the distinction between projects meeting the requirements of part 945, and those meeting the requirements of part 960. For example, the Department has changed the title to subpart D to read "Preferences for Elderly Families and Disabled Families in Mixed Population Projects" and uses this term "mixed population project" throughout the subpart D. Use of the term "mixed population project" should clarify that projects meeting the requirements of subpart D house both elderly families and disabled families.

Comment: Six commenters stated that reference in § 960.407 to the 10 percent limitation on families without a Federal preference should be revised to read "50 percent."

Response: The Department has not yet issued its final regulation on Federal preferences. Once the Federal preferences final rule is published, the Department will make a conforming amendment to part 960, subpart D to reflect the 50 percent.

Comments on the Information Collection Requirements

Comment: Ten commenters stated that the Department grossly underestimated the time for completion of the allocation plan.

Response: The Department believes that the substantial changes made to the allocation plan requirements by this final rule bring the plan more in line with the estimated burden hours.

Other Comments and Recommendations

Comment: Three commenters stated that they expect the most vigorous possible oversight by the Department of the allocation planning process, not only at the first step of initial approval, but biennial updates.

Response: The Department has every intention to monitor, through careful review of initial allocation plans and biennial updates, the operation of designated housing, and its impact on families served by PHAs that operate designated housing. Monitoring also will include monitoring and compliance reviews under section 504, investigations of complaints under section 504, the Fair Housing Act, and other civil rights authorities.

Comment: Four commenters stated that the final rule should require PHAs to preserve some mixed-use or general occupancy housing for persons with disabilities.

Response: The Department certainly encourages, but cannot require, PHAs to maintain mixed-used or general occupancy projects for persons with disabilities.

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, which implements section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) at the time of development of the proposed rule. This Finding of No Significant Impact 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, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12866

This final rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of HUD's Rule's Docket Clerk, room 10276, 451 Seventh St. SW., Washington, DC.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that the rule will not have a significant impact on a substantial number of small entities. The final rule establishes the requirements and procedures by which PHAs may designate projects, or portions of projects, for occupancy only by (1) elderly families, (2) disabled families, or (3) disabled families and elderly families. The rule incorporates the requirements established by statute for such designation. The designation of housing for occupancy by elderly families, disabled families, or disabled families and elderly families is an option provided to, not a requirement imposed on, PHAs by this rule.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule would not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the order. This final rule implements the designation process provided by section 622 of the 1992 Act, the purpose of which is to assist PHAs in meeting the housing and supportive service needs of disabled families and elderly families. The supportive services provided by PHAs to disabled and elderly families are expected to assist these families in avoiding possible institutionalization, and to reduce unnecessary stress and financial burden on these families. Thus, the supportive services component of the program is anticipated to have a beneficial impact on disabled families and elderly families.

Since the designation process, however, provides for elderly-only housing and disabled-only housing, there is the possibility that the designation process authorized by section 622 of the 1992 Act would limit the availability of housing for (1) disabled families (if a PHA designates elderly family-only housing), (2) elderly families (if a PHA designates disabled family-only housing) or (3) families with children (if a PHA designates disabled families and/or elderly family-only housing), and thus adversely impact the maintenance and well-being of these families. (Although it should be noted that PHAs would be required to admit eligible elderly families with children to designated projects for elderly families, and admit eligible disabled families with children to projects designated for disabled families.) The final rule, however, provides certain protections for all family types, including the protection provided by HUD's review and approval of a PHA's housing allocation plan. The purpose of this review is to ensure that the availability of public housing, and other housing resources available to the PHA, is not reduced for any of these families, especially non-elderly disabled families.

Thus, the impact on family maintenance and well being that may result from the designation process, as implemented by the Department through this rule, would not be significant within the meaning of the order.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this final rule would not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities among the various levels of government. The is limited to implementing the procedures under which PHAs may opt, subject to certain requirements and procedures, to designate public housing projects, or portions of public housing projects, for occupancy by elderly families, disabled families, or disabled families and elderly families.

Regulatory Agenda

This rule was listed as sequence number 1635 in the Department's Semiannual Agenda of Regulations, published on October 25, 1993 (58 FR 56402, 56448) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 945

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

1. A new part 945, consisting of §§ 945.101 through 945.303, is added to read as follows:

PART 945—DESIGNATED HOUSING—PUBLIC HOUSING DESIGNATED FOR OCCUPANCY BY DISABLED, ELDERLY, OR DISABLED AND ELDERLY FAMILIES

Subpart A—General

Sec.

945.101 Purpose.
945.103 General policies.
945.105 Definitions.

Subpart B—Application and Approval Procedures

945.201 Approval to designate housing.
945.203 Allocation plan.
945.205 Designated housing for disabled families.

Subpart C—Operating Designated Housing

945.301 General requirements.
945.303 Requirements governing occupancy in designated housing.

Authority: 42 U.S.C. 1473e; 42 U.S.C. 3535(d).

Subpart A—General

§ 945.101 Purpose.

The purpose of this part is to provide for designated housing as authorized by section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e). Section 7 provides public housing agencies with the option, subject to the requirements and procedures of this part, to designate public housing projects, or portions of public housing projects, for occupancy by disabled families, elderly families, or mixed populations of disabled families and elderly families.

§ 945.103 General policies.

(a) *Agency participation.* Participation in this program is limited to public housing agencies (PHAs) (as this term is defined in 24 CFR 913.102) that elect to designate public housing projects for occupancy by disabled families, elderly families, or disabled families and elderly families, as provided by this part.

(b) *Eligible housing*—(1) *Designation of public housing.* Projects eligible for designation under this part are public housing projects as described in the definition of "project" in § 945.105.

(2) *Additional housing resources.* To meet the housing and supportive service needs of elderly families, and disabled families, including non-elderly disabled families, who will not be housed in a designated project, PHAs shall utilize housing resources that they own, control, or have received preliminary notification that they will obtain (e.g., section 8 certificates and vouchers). They also may utilize housing resources for which they plan to apply during the period covered by the allocation plan, and that they have a reasonable expectation of obtaining. PHAs also may utilize, to the extent practicable, any housing facilities that they own or control in which supportive services are already provided, facilitated or coordinated, such as mixed housing, shared housing, family housing, group homes, and congregate housing.

(3) *Exemption of mixed population projects.* A PHA with a public housing project with a mixed population of elderly families and disabled families that plans to house them in such project in accordance with the requirements of 24 CFR part 960, subpart D, is not required to meet the designation requirements of this part.

(c) *Family Participation in designated housing*—(1) *Voluntary participation.* The election to reside in designated housing is voluntary on the part of a family. No disabled family or elderly family may be required to reside in designated housing, nor shall a decision not to reside in designated housing adversely affect the family with respect to occupancy of another appropriate project.

(2) *Meeting stated eligibility requirements.* Nothing in this part shall be construed to require or permit a PHA to accept for admission to a designated project a disabled family or elderly family who does not meet the stated eligibility requirements for occupancy in the project (for example, income), as set forth in HUD's regulations in 24 CFR parts 912 and 913, and in the PHA's admission policies.

§ 945.105 Definitions.

As used in this part:

Act means the United States Housing Act of 1937 (42 U.S.C. 1437–1440).

Accessible units means units that meet the requirement of accessibility with respect to dwellings as set forth in the second definition of "accessible" in 24 CFR 8.3.

Allocation plan. See § 945.201.

CHAS means the comprehensive housing affordability strategy required by section 105 of the National Affordable Housing Act (42 U.S.C. 12705) or any successor plan prescribed by HUD.

Designated family means the category of family for whom the project is designated (e. g., elderly family in a project designated for elderly families).

Designated housing or *designated project* means a project (or projects), or a portion of a project (or projects) (as these terms are defined in this section), that has been designated in accordance with the requirements of this part.

Disabled family means a family whose head or spouse or sole member is a person with disabilities. The term "disabled family" may include two or more persons with disabilities living together, and one or more persons with disabilities living with one or more persons who are determined to be essential to the care or well-being of the person or persons with disabilities. A disabled family may include persons with disabilities who are elderly.

Elderly family means a family whose head, spouse, or sole member is an

elderly person. The term "elderly family" includes an elderly person, two or more elderly persons living together, and one or more elderly persons living with one or more persons who are determined to be essential to the care or well-being of the elderly person or persons. An elderly family may include elderly persons with disabilities and other family members who are not elderly.

Elderly person means a person who is at least 62 years of age.

Family includes but is not limited to a single person as defined in this part, a displaced person (as defined in 24 CFR part 912), a remaining member of a tenant family, a disabled family, an elderly family, a near-elderly family, and a family with children. It also includes an elderly family or a disabled family composed of one or more elderly persons living with one or more disabled persons.

Housing has the same meaning as "project," which is defined in this section.

HUD or *Department* means the Department of Housing and Urban Development including any Field Offices to which authority has been delegated to perform functions under this part.

Mixed population project means a public housing project reserved for elderly families and disabled families. This is the project type referred to in NAHA as being designated for elderly and disabled families. A PHA that has a mixed population project or intends to develop one need not submit an allocation plan or request a designation. However, the project must meet the requirements of 24 CFR part 960 subpart D.

NAHA means the National Affordable Housing Act (Pub.L. 101–625, approved November 28, 1990).

Near-elderly family means a family whose head, spouse, or sole member is a near-elderly person. The term "near-elderly family" includes two or more near-elderly persons living together, and one or more near-elderly persons living with one or more persons who are determined to be essential to the care or well-being of the near-elderly person or persons. A near-elderly family may include other family members who are not near-elderly.

Near-elderly person means a person who is at least 50 years of age but below the age of 62, who may be a person with a disability.

Non-elderly disabled person means a person with a disability who is less than 62 years of age.

Person with disabilities means a person who—

(a) Has disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

(b) Is determined to have a physical, mental, or emotional impairment that—

(1) Is expected to be of long-continued and indefinite duration,

(2) Substantially impedes his or her ability to live independently, and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(c) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term "person with disabilities" does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

Portion of project includes: One or more buildings in a multi-building project; one or more floors of a project or projects; a certain number of dwelling units in a project or projects. (Designation of a portion of a project does not require that the buildings, floors or units be contiguous.)

Project means low-income housing developed, acquired, or assisted by a PHA under the U.S. Housing Act of 1937 (other than section 8) for which there is an Annual Contributions Contract (ACC) between HUD and the PHA. For purposes of this part, the terms *housing* and *public housing* mean the same as project. Additionally, as used in this part, and unless the context indicates otherwise, the term *project* when used in the singular includes the plural, and when used in the plural, includes the singular, and also includes a "portion of a project," as defined in this section.

Public housing or *public housing project.* See definition of "project" in this section.

Public housing agency or *PHA.* See 24 CFR 913.102.

Secretary means the Secretary of Housing and Urban Development.

Service provider means a person or organization qualified and experienced in the provision of supportive services, and that is in compliance with any licensing requirements imposed by State or local law for the type of service or services to be provided. The service provider may provide the service on either a for-profit or not-for-profit basis.

Single person means a person who lives alone or intends to live alone, who is not an elderly person, a person with disabilities, a displaced person, or the remaining member of a tenant family.

Supportive service plan. See § 945.205.

Supportive services means services available to persons residing in a development, requested by disabled families and for which there is a need, and may include, but are not limited to, meal services, health-related services, mental health services, services for nonmedical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable State laws), case management, personal emergency response, and other appropriate services.

Subpart B—Application and Approval Procedures

§ 945.201 Approval to designate housing.

(a) *Designated housing for elderly families.* To designate a project for occupancy by elderly families, a PHA must have a HUD-approved allocation plan that meets the requirements of § 945.203.

(b) *Designated housing for disabled families.* To designate a project for occupancy by disabled families, a PHA must have a HUD-approved allocation plan that meets the requirements of § 945.203, and a HUD-approved supportive service plan that meets the requirements of § 945.205.

(c) *Designated housing for elderly families and disabled families.* (1) A PHA that provides or intends to provide a mixed population project (a project for both elderly families *and* disabled families) is not required to meet the requirements of this part. The PHA is required to meet the requirements of 24 CFR part 960, subpart D.

(2) A PHA that intends to provide designated housing for elderly families or for disabled families must identify any existing or planned mixed population projects, reserved under 24 CFR part 960, subpart B, as additional housing resources, in its allocation plan, in accordance with § 945.203(c)(6).

§ 945.203 Allocation plan.

(a) *Applicable terminology.* (1) As used in this section, the terms "initial allocation plan" refers to the PHA's first submission of an allocation plan, and "updated allocation plan" refers to the biennial update (once every two years) of this plan, which is described in paragraph (f) of this section.

(2) As provided in § 945.105, the term "project" includes the plural ("projects") and includes a portion of a project.

(b) *Consultation in plan development.* These consultation requirements apply to the development of an initial allocation plan as provided in paragraph (c) of this section, or any update of the allocation plan as provided in paragraph (f) of this section.

(1) In preparing the draft plan, the PHA shall consult with:

(i) The State or unit of general local government where the project is located;

(ii) Public and private service providers;

(iii) Representative advocacy groups for each of these family types: disabled families, elderly families, and families with children, where such advocacy groups exist;

(iv) Representatives of the residents of the PHA's projects proposed for designation, including representatives from resident councils or resident management corporations where they exist; and

(v) Other parties that the PHA determines would be interested in the plan, or other parties that have contacted the PHA and expressed an interest in the plan.

(2) Following the completion of the draft plan, the PHA shall:

(i) Issue public notices regarding its intention to designate housing and the availability of the draft plan for review;

(ii) Contact directly those individuals, agencies and other interested parties specified in paragraph (b)(1) of this section, and advise of the availability of the draft plan for review;

(iii) Allow not less than 30 days for public comment on the draft allocation plan;

(iv) Make free copies of the draft plan available upon request, and in accessible format, when appropriate;

(v) Conduct at least one public meeting on the draft allocation plan;

(vi) Give fair consideration to all comments received; and

(vii) Retain any records of public meetings held on the allocation plan (or updated plan) and any written comments received on the plan for a period of five years commencing from the date of submission of the allocation plan to HUD. These records must be available for review by HUD.

(c) *Contents of initial plan.* The initial allocation plan shall contain, at a minimum, the information set forth in this paragraph (c).

(1) *Identification of the project to be designated and type of designation to be made.* The PHA must:

(i) Identify the type of designation to be made (i.e., housing for disabled families or housing for elderly families);

(ii) Identify the building(s), floor(s), or unit(s) to be designated and their location, or if specific units are not designated, the number to be designated; and

(iii) State the reasons the building(s), floor(s), or unit(s) were selected for designation.

(2) *Identification of groups and persons consulted and comments submitted.* The PHA must:

(i) Identify the groups and persons with whom the PHA has consulted in the development of the allocation plan;

(ii) Include a summary of comments received on the plan from the groups and persons consulted; and

(iii) Describe how the plan addresses these comments.

(3) *Profile of proposed designated project in pre-designation state.* This component of the plan must include, for the projects, buildings, or portions of buildings to be designated:

(i) The total number of families currently occupying the project, and

(A) The number of families who are members of the group for whom the project is to be designated, and

(B) The number of families who are not members of the group for whom the project is to be designated;

(ii) An estimate of the total number of elderly families and disabled families who are potential tenants of the project (i.e., as the project now exists), based on information provided by:

(A) The waiting list from which vacancies in the project are filled; and

(B) A local housing needs survey, if available, such as the CHAS, for the jurisdiction within which the area served by the PHA is located;

(iii) An estimate of the number of potential tenants who will need accessible units based on information provided by:

(A) The needs assessment prepared in accordance with 24 CFR 8.25, and

(B) A housing needs survey, if available, such as the CHAS or HUD-prescribed successor survey;

(iv) The number of units in the project that became vacant and available for occupancy during the year preceding the date of submission of the allocation plan to HUD;

(v) The average length of vacancy for dwelling units in the project for the year preceding the date of submission of the allocation plan to HUD;

(vi) An estimate of the number of units in the project that the PHA expects to become vacant and available for occupancy during the two-year period following the date of submission of the allocation plan to HUD (i.e., if the project were not to be designated);

(vii) An estimate of the average length of time elderly families and non-elderly persons with disabilities currently have to wait for a dwelling unit.

(4) *Projected profile of project in designated state.* This component of the plan must:

(i) Identify the source of the families for the designated project (e.g., current residents of the project, families currently on the waiting list, residents of other projects, and potential tenants based on information from the local housing needs survey);

(ii) For projects proposed to be designated for occupancy by elderly families an estimate of the number of:

(A) Units in the project that are anticipated to become vacant and available for occupancy during the two-year period following the date of submission of the allocation plan to HUD;

(B) Near-elderly families who may be needed to fill units in the designated project for elderly families, as provided in § 945.303(c);

(iii) Describe any impact the designation may have on the average length of time applicants in the group for which the project is designated and other applicants will have to wait for a dwelling unit.

(5) *PHA occupancy policies and procedures.* This component of the plan must describe any changes the PHA intends to make in its admission policies to accommodate the designation, including:

(i) How the waiting list will be maintained;

(ii) How dwelling units will be assigned; and

(iii) How records will be maintained to document the effect on all families who would have resided in the designated project if it had not been designated.

(6) *Strategy for addressing the current and future housing needs of the families in the PHA's jurisdiction.* The PHA must:

(i) Identify the housing resources currently owned or controlled by the PHA, including any mixed population projects, in existence, as provided in 24 CFR part 960, subpart D, that will be available to these families;

(ii) Describe the steps to be taken by the PHA to respond to any need for accessible units that will no longer be available for applicants who need them. The PHA has a continuing obligation under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) to provide accessible dwellings even if the project designation removes accessible dwellings from the inventory of possible dwellings for non-elderly persons with disabilities;

(iii) If a project is being designated for elderly families, describe the steps the PHA will take to facilitate access to

supportive services by non-elderly disabled families. The services should be equivalent to those available in the designated project and requested by non-elderly disabled families. If the PHA funds supportive services for the designated project for elderly families, the PHA must provide the same level of services, upon the request of non-elderly disabled families.

(iv) If a project is being designated for elderly families, identify the additional housing resources that the PHA determines will be sufficient to provide assistance to not less than the number of non-elderly disabled families that would have been housed by the PHA if occupancy in units in the designated project were not restricted to elderly families (one-for-one replacement is not required). Among these resources may be:

(A) Normal turnover in existing projects;

(B) Existing housing stock that previously was not available to or considered for non-elderly disabled families. Examples are dwellings in general occupancy (family) projects that are reconfigured to meet the dwelling size needs of the non-elderly disabled families, or were previously occupied by elderly families who will relocate to the designated project for elderly families, or were previously vacant because there had not been a demand for dwellings of that size in that location;

(C) Housing for which the PHA has received preliminary notification that it will obtain; and

(D) Housing for which the PHA plans to apply during the period covered by the allocation plan, and which it has a reasonable expectation of obtaining.

(v) Where a project is being designated for elderly families, explain how the PHA plans to secure the required additional housing resources. In the case of housing for which the PHA plans to apply, the PHA must provide sufficient information about the housing resource and its application to establish that the PHA can reasonably expect to obtain the housing.

(vi) Describe incentives, if any, that the PHA intends to offer to:

(A) Families who are members of the group for whom a project was designated to achieve voluntary transfers *to* the designated project; and

(B) Families who are not members of the group for whom a project was designated to achieve voluntary transfers *from* the project proposed to be designated;

(d) *Criteria for allocation plan approval.* HUD shall approve an initial allocation plan, or updated allocation plan, if HUD determines that:

(1) The information contained in the plan is complete and accurate (a plan that is incomplete, i.e., missing required statements or items, will be disapproved), and the projections are reasonable;

(2) Implementation of the plan will not result in a substantial increase in the vacancy rates in the designated project;

(3) Implementation of the plan will not result in a substantial increase in delaying or denying housing assistance to families on the PHA's waiting list because of designating projects;

(4) The plan for securing sufficient additional housing resources for non-elderly disabled persons can reasonably be achieved; and

(5) The plan conforms to the requirements of this part.

(e) *Allocation plan approval or disapproval.*—(1) *Written notification.* HUD shall notify each PHA, in writing, of approval or disapproval of the initial or updated allocation plan.

(2) *Timing of notification.* An allocation plan shall be considered to be approved by HUD if HUD fails to provide the PHA with notification of approval or disapproval of the plan, as required by paragraph (e)(1) of this section, within:

(i) 90 days after the date of submission of an allocation plan that contains comments, as provided in paragraph (c)(2) of this section; or

(ii) 45 days after the date of submission of all other plans, including

(A) Initial plans for which no comments were received;

(B) Updated plans, as provided in paragraph (f) of this section; and

(C) Revised initial plans or revised updated plans, as provided in paragraph (e)(4) of this section.

(3) *Approval limited solely to approval of designated housing.* HUD's approval of an initial plan or updated allocation plan under this section may not be construed to constitute approval of any request for assistance for major reconstruction of obsolete projects, assistance for development or acquisition of public housing, or assistance under 24 CFR part 890 (supportive housing for persons with disabilities).

(4) *Resubmission following disapproval.* If HUD disapproves an initial allocation plan, a PHA shall have a period of not less than 45 days or more than 90 days following notification of disapproval as provided in paragraph (e)(2) of this section, to submit amendments to the plan, or to submit a revised plan.

(f) *Biennial update of plan.*—(1) *General.* Each PHA that owns or operates a public housing project that is designated for occupancy under this part shall update its allocation plan not less than once every two years, from the date of HUD approval of the initial allocation plan. A PHA that wishes to amend or revise its plan later than 90 days after HUD disapproval must begin the hearing and consultation process again.

(2) *Failure to submit updated plan.* If the PHA fails to submit the updated plan as required by this paragraph (f), the Secretary may revoke the designation in accordance with the provisions of paragraph (f)(4)(ii) of this section.

(3) *Contents of updated plan.* The updated allocation plan shall contain, at a minimum, the following information:

(i) The most recent update of the allocation plan data, and projections for the next two years;

(ii) An assessment of the accuracy of the projections contained in previous plans and in the updated allocation plan;

(iii) The number of times a vacancy was filled in accordance with § 945.303(c);

(iv) A discussion of the impact of the designation on the designated project and the other public housing projects operated by the PHA, using the data obtained from the system developed in § 945.203(c), including

(A) The number of times there was a substantial increase in delaying housing assistance to families on the PHA's waiting list because projects were designated; and

(B) The number of times there was a substantial increase in denying housing assistance to families on the PHA's waiting list because projects were designated;

(v) A plan for adjusting the allocation of designated units, if necessary.

(4) *Criteria for approval of updated plan.* (i) HUD shall approve an updated allocation plan based on HUD's review and assessment of the updated plan, using the criteria in (d) of this section. If HUD considers it appropriate, the review and assessment shall include any on-site review and monitoring of PHA performance in the administration of its designated housing and in the allocation of the PHA's housing resources. Notification of approval or disapproval of the updated allocation plan shall be provided in accordance with paragraph (e) of this section;

(ii) If a PHA's updated plan is not approved, HUD may require PHAs to change the designation of existing or planned projects to other categories,

such as general occupancy or mixed population projects.

(5) *Notification of approval or disapproval of updated plan.* HUD shall notify each PHA submitting an updated plan of approval or disapproval of the updated plan, in accordance with the form of notification and within the time periods required by paragraph (e) of this section.

(Approved by the Office of Management and Budget under control number 2577–0192.)

§ 945.205 Designated housing for disabled families.

(a) *General.* (1) In general, HUD will approve designated projects for disabled families only if there is a clear demonstration that there is both a need and a demand by disabled families for such designation. In the absence of such demonstrated need and demand, PHAs should provide for the housing needs of disabled families in the most integrated setting possible.

(2) To designate a project for disabled families, a PHA must submit the allocation plan required by § 945.203 and the supportive service plan described in paragraph (b) of this section.

(3) In its allocation plan,

(i) The PHA may not designate a project for persons with a specific disability;

(ii) The designated project does not have to be made up of contiguous units. PHAs are encouraged to place the units in the project, whether contiguous or not, in the most integrated setting possible.

(4) The consultation process for the allocation plan provided in § 945.203(b) and consultation process for the supportive service plan provided in this section may occur concurrently.

(5) If the PHA conducts surveys to determine the need or demand for a designated project for disabled families or for supportive services in such project, the PHA must protect the confidentiality of the survey responses.

(b) *Supportive Service Plan.* The plan shall describe how the PHA will provide or arrange for the provision of the appropriate supportive services requested by the disabled families who will occupy the designated housing and who have expressed a need for these services.

(1) *Contents of plan.* The supportive service plan, at a minimum, must:

(i) Identify the number of disabled families who need the supportive services and who have expressed an interest in receiving them;

(ii) Describe the types of supportive services that will be provided, and, if known, the length of time the supportive services will be available;

(iii) Identify each service provider to be utilized, and describe the experience of the service provider in delivering supportive services;

(iv) Describe how the supportive services will be provided to the disabled families that the designated housing is expected to serve (how the services will be provided depends upon the type of service offered; e.g., if the package includes transportation assistance, how transportation assistance will be provided to disabled families);

(v) Identify all sources of funding upon which the PHA is relying to deliver supportive services to residents of the designated housing for disabled families, or the supportive service resources to be provided in lieu of funding;

(vi) Submit evidence of a specific contractual commitment or commitments provided to the PHA by the sources identified in paragraph (b)(1)(v) of this section to make funds available for supportive services, or the delivery of supportive services available to the PHA for at least two calendar years;

(vii) Identify any public and private service providers, advocates for the interests of designated housing families, and other interested parties with whom the PHA consulted in the development of this supportive service plan, and summarize the comments and recommendations made by these parties. (These comments must be maintained for a period of five years, and be available for review by HUD as provided in paragraph (b)(2)(vii) of this section.);

(viii) If applicable, address the need for residential supervision of disabled families (on-site supervision within the designated housing) and how this supervision is to be provided;

(ix) Include any other information that the PHA determines would assist HUD in assessing the suitability of the PHA's supportive service plan; and

(x) Include any additional information that HUD may request, and which is appropriate to a determination of the suitability of the supportive service plan.

(2) *Public review and comment on the supportive service plan.* In preparing the initial supportive service plan, or any update of the supportive service plan, the PHA shall:

(i) Issue public notices regarding its intention to provide supportive services to designated housing for disabled families and the availability of the draft supportive service plan;

(ii) Send notices directly to interested individuals and agencies that have contacted the PHA and have expressed an interest in the supportive service plan, and to parties specified in paragraph (b)(1)(vii) of this section;

(iii) Allow not less than 30 days for public comment on the supportive service plan;

(iv) Make free copies of the draft plan available upon request, and in accessible format, when appropriate;

(v) Conduct at least one public meeting regarding the supportive service plan;

(vi) Give fair consideration to all comments received; and

(vii) Retain any records of the public meetings held on the supportive service plan, and any written comments received on the supportive service plan for a period of five years, from the date of submission of the supportive service plan. These records must be available for review by HUD.

(c) *Approval.* HUD shall approve designated housing for disabled families if the allocation plan meets the requirements of § 945.203, including demonstrating both a need and a demand for designated housing for disabled families, and if HUD determines on the basis of the information provided in the supportive service plan that:

(1) There is a sufficient number of persons with disabilities who have expressed an interest in occupying a designated project for disabled families, and who have expressed a need and demand for the supportive services that will be provided;

(2) The supportive services are adequately designed to meet the needs of the disabled families who have indicated a desire for them;

(3) The service provider has current or past experience administering an effective supportive service delivery program for persons with disabilities;

(4) If residential supervision is required, a written commitment to provide this supervision in the designated housing.

(Approved by the Office of Management and Budget under control number 2577–0192.)

Subpart C—Operating Designated Housing

§ 945.301 General requirements.

The application procedures and operation of designated projects shall be in conformity with the regulations of this part, and the regulations applicable to PHAs in 24 CFR Chapter IX, including 24 CFR parts 913, 960 and 966, and, in particular, the nondiscrimination requirements of 24

CFR 960.211(b)(3), that include but are not limited to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Fair Housing Act (42 U.S.C. 3601–3619), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), the Age Discrimination Act (42 U.S.C. 6101–6107), Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339), Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958–1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), the Americans with Disabilities Act (42 U.S.C. 12101–12213) (to the extent the Americans with Disabilities Act is applicable) and the implementing regulations of these statutes and authorities; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

§ 945.303 Requirements governing occupancy in designated housing.

(a) *Priority for occupancy.* Except as provided in paragraph (c) of this section, in determining priority for admission to designated housing, the PHA shall make units in the designated housing available only to designated families.

(b) *Compliance with preference regulations.* Among the designated families, the PHA shall give preference in accordance with the preferences in 24 CFR part 960, subpart B.

(c) *Eligibility of other families for housing designated for elderly families*—(1) *Insufficient elderly families.* If there are an insufficient number of elderly families for the units in a project designated for elderly families, the PHA may make dwelling units available to near-elderly families, who qualify for preferences under 24 CFR part 960, subpart B. The election to make dwelling units available to near-elderly families if there are an insufficient number of elderly families should be explained in the PHA's allocation plan.

(2) *Insufficient elderly families and near-elderly families.* If there are an insufficient number of elderly families and near-elderly families for the units in a project designated for elderly families, the PHA shall make available to all other families any dwelling unit that is:

(i) Ready for re-rental and for a new lease to take effect; and

(ii) Vacant for more than 60 consecutive days.

(d) *Tenant choice of housing.* (1) Subject to paragraph (d)(2) of this section, the decision of any disabled family or elderly family not to occupy or accept occupancy in designated housing shall not have an adverse affect on:

(i) The family's admission to or continued occupancy in public housing; or

(ii) The family's position on or placement on a public housing waiting list.

(2) The protection provided by paragraph (d)(1) of this section shall not apply to any family who refuses to occupy or accept occupancy in designated housing because of the race, color, religion, sex, disability, familial status, or national origin of the occupants of the designated housing or the surrounding area.

(3) The protection provided by paragraph (d)(1) of this section shall apply to an elderly family or disabled family that declines to accept occupancy, respectively, in a designated project for elderly families or for disabled families, and requests occupancy in a general occupancy project or in a mixed population project.

(e) *Appropriateness of dwelling unit to family size.* This part may not be construed to require a PHA to offer a dwelling in a designated project to any family who is not of appropriate family size for the dwelling unit. The temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size.

(f) *Prohibition of evictions.* Any tenant who is lawfully residing in a dwelling unit in a public housing project may not be evicted or otherwise required to vacate the unit because of the designation of the project, or because of any action taken by HUD or the PHA in accordance with this part.

(g) *Prohibition of coercion to accept supportive services.* As with other HUD-assisted housing, no disabled family or elderly family residing in designated housing may be required to accept supportive services made available by the PHA under this part.

(h) *Availability of grievance procedures in 24 CFR part 966.* The grievance procedures in 24 CFR part 966, subpart B, which applies to public housing tenants, is applicable to this part.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

2. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 3535(d).

3. The heading of subpart D is revised, § 960.409 is removed, and §§ 960.401, 960.403, 960.405, and 960.407 are revised to read as follows:

Subpart D—Preference for Elderly Families and Disabled Families in Mixed Population Projects

§ 960.401 Purpose.

This subpart establishes a preference for elderly families and disabled families for admission to mixed population public housing projects, as defined in § 960.405.

§ 960.403 Applicability.

(a) This subpart applies to all dwelling units in mixed population projects (as defined in § 960.405), or portions of mixed population projects, assisted under the U.S. Housing Act of 1937. These projects formerly were known as elderly projects.

(b) This subpart does not apply to section 23 and section 10(c) leased housing projects or the section 23 Housing Assistance Payments Program where the owners enter into leases directly with the tenants, or to the Section 8 Housing Assistance Payments Program, the Low-Rent Housing Homeownership Opportunities Program (Turnkey III), the Mutual Help Homeownership Opportunities Program, or to Indian Housing Authorities. (For applicability to Indian Housing Authorities, see part 905 of this chapter.) Additionally, this subpart is not applicable to projects designated for elderly families or designated for disabled families in accordance with 24 CFR part 945.

§ 960.405 Definitions.

Designated housing. See definition of "designated housing" in 24 CFR part 945.

Disabled families. See definition of "disabled families" in 24 CFR part 945.

Elderly families. See definition of "elderly families" in 24 CFR part 945.

Mixed population project is a public housing project, or portion of a project, that was reserved for elderly families and disabled families at its inception (and has retained that character). If the project was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the project (or portion of project) to elderly families and disabled families. These projects formerly were known as elderly projects.

§ 960.407 Selection preference; other preferences; single person occupancy.

(a) A PHA must give preference to elderly families and disabled families equally in determining priority for admission to mixed population projects. A PHA may not establish a limit on the number of elderly families or disabled

families who may be accepted for occupancy in a mixed population project.

(b) The PHA must follow its policies and procedures for applying the Federal preferences contained in subpart B of this part when selecting applicants for admission from among elderly families and disabled families.

(c) Elderly families and disabled families who do not qualify for a Federal preference contained in subpart B of this part, and who are given preference for admission under paragraph (a) of this section over non-elderly families and non-disabled families that qualify for such a Federal preference, are not subject to the statutory 10 percent limitation on admission of families without a Federal preference over families with such a Federal preference that may initially receive assistance in any one-year period, as provided in 24 CFR 960.211(b)(2)(ii).

(d) If an elderly or disabled applicant is a single person, as this term is defined in 24 CFR part 945, the elderly single person or the disabled single person shall be given a preference for admission to mixed population projects over single persons who are neither elderly nor disabled.

(e) In offering available units to elderly families and disabled families in mixed population projects, units with accessible features should first be offered to persons with disabilities who require the accessibility features of the unit in accordance with the requirements of 24 CFR 8.27 and 24 CFR 100.202(c)(3).

Dated: April 7, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–8897 Filed 4–12–94; 8:45 am]

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federal register

Wednesday
April 13, 1994

Part VI

The President

Executive Order 12906—Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure

Part VI

The President

Federal Register
Vol. 59, No. 71
Wednesday, April 13, 1994

Presidential Documents

Title 3—

The President

Executive Order 12906 of April 11, 1994

Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure

Geographic information is critical to promote economic development, improve our stewardship of natural resources, and protect the environment. Modern technology now permits improved acquisition, distribution, and utilization of geographic (or geospatial) data and mapping. The National Performance Review has recommended that the executive branch develop, in cooperation with State, local, and tribal governments, and the private sector, a coordinated National Spatial Data Infrastructure to support public and private sector applications of geospatial data in such areas as transportation, community development, agriculture, emergency response, environmental management, and information technology.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America; and to implement the recommendations of the National Performance Review; to advance the goals of the National Information Infrastructure; and to avoid wasteful duplication of effort and promote effective and economical management of resources by Federal, State, local, and tribal governments, it is ordered as follows:

Section 1. DEFINITIONS. (a) "National Spatial Data Infrastructure" ("NSDI") means the technology, policies, standards, and human resources necessary to acquire, process, store, distribute, and improve utilization of geospatial data.

(b) "Geospatial data" means information that identifies the geographic location and characteristics of natural or constructed features and boundaries on the earth. This information may be derived from, among other things, remote sensing, mapping, and surveying technologies. Statistical data may be included in this definition at the discretion of the collecting agency.

(c) The "National Geospatial Data Clearinghouse" means a distributed network of geospatial data producers, managers, and users linked electronically.

Sec. 2. EXECUTIVE BRANCH LEADERSHIP FOR DEVELOPMENT OF THE COORDINATED NATIONAL SPATIAL DATA INFRASTRUCTURE. (a) The Federal Geographic Data Committee ("FGDC"), established by the Office of Management and Budget ("OMB") Circular No. A–16 ("Coordination of Surveying, Mapping, and Related Spatial Data Activities") and chaired by the Secretary of the Department of the Interior ("Secretary") or the Secretary's designee, shall coordinate the Federal Government's development of the NSDI.

(b) Each member agency shall ensure that its representative on the FGDC holds a policy-level position.

(c) Executive branch departments and agencies ("agencies") that have an interest in the development of the NSDI are encouraged to join the FGDC.

(d) This Executive order is intended to strengthen and enhance the general policies described in OMB Circular No. A–16. Each agency shall meet its respective responsibilities under OMB Circular No. A–16.

(e) The FGDC shall seek to involve State, local, and tribal governments in the development and implementation of the initiatives contained in this order. The FGDC shall utilize the expertise of academia, the private sector, professional societies, and others as necessary to aid in the development and implementation of the objectives of this order.

Sec. 3. DEVELOPMENT OF A NATIONAL GEOSPATIAL DATA CLEARINGHOUSE. (a) *Establishing a National Geospatial Data Clearinghouse.* The Secretary, through the FGDC, and in consultation with, as appropriate, State, local, and tribal governments and other affected parties, shall take steps within 6 months of the date of this order, to establish an electronic National Geospatial Data Clearinghouse ("Clearinghouse") for the NSDI. The Clearinghouse shall be compatible with the National Information Infrastructure to enable integration with that effort.

(b) *Standardized Documentation of Data.* Beginning 9 months from the date of this order, each agency shall document all new geospatial data it collects or produces, either directly or indirectly, using the standard under development by the FGDC, and make that standardized documentation electronically accessible to the Clearinghouse network. Within 1 year of the date of this order, agencies shall adopt a schedule, developed in consultation with the FGDC, for documenting, to the extent practicable, geospatial data previously collected or produced, either directly or indirectly, and making that data documentation electronically accessible to the Clearinghouse network.

(c) *Public Access to Geospatial Data.* Within 1 year of the date of this order, each agency shall adopt a plan, in consultation with the FGDC, establishing procedures to make geospatial data available to the public, to the extent permitted by law, current policies, and relevant OMB circulars, including OMB Circular No. A–130 ("Management of Federal Information Resources") and any implementing bulletins.

(d) *Agency Utilization of the Clearinghouse.* Within 1 year of the date of this order, each agency shall adopt internal procedures to ensure that the agency accesses the Clearinghouse before it expends Federal funds to collect or produce new geospatial data, to determine whether the information has already been collected by others, or whether cooperative efforts to obtain the data are possible.

(e) *Funding.* The Department of the Interior shall provide funding for the Clearinghouse to cover the initial prototype testing, standards development, and monitoring of the performance of the Clearinghouse. Agencies shall continue to fund their respective programs that collect and produce geospatial data; such data is then to be made part of the Clearinghouse for wider accessibility.

Sec. 4. DATA STANDARDS ACTIVITIES. (a) *General FGDC Responsibility.* The FGDC shall develop standards for implementing the NSDI, in consultation and cooperation with State, local, and tribal governments, the private and academic sectors, and, to the extent feasible, the international community, consistent with OMB Circular No. A–119 ("Federal Participation in the Development and Use of Voluntary Standards"), and other applicable law and policies.

(b) *Standards for Which Agencies Have Specific Responsibilities.* Agencies assigned responsibilities for data categories by OMB Circular No. A–16 shall develop, through the FGDC, standards for those data categories, so as to ensure that the data produced by all agencies are compatible.

(c) *Other Standards.* The FGDC may from time to time identify and develop, through its member agencies, and to the extent permitted by law, other standards necessary to achieve the objectives of this order. The FGDC will promote the use of such standards and, as appropriate, such standards shall be submitted to the Department of Commerce for consideration as Federal Information Processing Standards. Those standards shall apply to geospatial data as defined in section 1 of this order.

(d) *Agency Adherence to Standards.* Federal agencies collecting or producing geospatial data, either directly or indirectly (e.g. through grants, partnerships, or contracts with other entities), shall ensure, prior to obligating funds for such activities, that data will be collected in a manner that meets all relevant standards adopted through the FGDC process.

Sec. 5. NATIONAL DIGITAL GEOSPATIAL DATA FRAMEWORK. In consultation with State, local, and tribal governments and within 9 months of the date of this order, the FGDC shall submit a plan and schedule to OMB for completing the initial implementation of a national digital geospatial data framework ("framework") by January 2000 and for establishing a process of ongoing data maintenance. The framework shall include geospatial data that are significant, in the determination of the FGDC, to a broad variety of users within any geographic area or nationwide. At a minimum, the plan shall address how the initial transportation, hydrology, and boundary elements of the framework might be completed by January 1998 in order to support the decennial census of 2000.

Sec. 6. PARTNERSHIPS FOR DATA ACQUISITION. The Secretary, under the auspices of the FGDC, and within 9 months of the date of this order, shall develop, to the extent permitted by law, strategies for maximizing cooperative participatory efforts with State, local, and tribal governments, the private sector, and other nonfederal organizations to share costs and improve efficiencies of acquiring geospatial data consistent with this order.

Sec. 7. SCOPE. (a) For the purposes of this order, the term "agency" shall have the same meaning as the term "Executive agency" in 5 U.S.C. 105, and shall include the military departments and components of the Department of Defense.

(b) The following activities are exempt from compliance with this order:

(i) national security-related activities of the Department of Defense as determined by the Secretary of Defense;

(ii) national defense-related activities of the Department of Energy as determined by the Secretary of Energy; and

(iii) intelligence activities as determined by the Director of Central Intelligence.

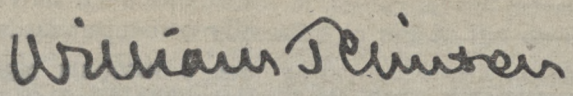
(c) The NSDI may involve the mapping, charting, and geodesy activities of the Department of Defense relating to foreign areas, as determined by the Secretary of Defense.

(d) This order does not impose any requirements on tribal governments.

(e) Nothing in the order shall be construed to contravene the development of Federal Information Processing Standards and Guidelines adopted and promulgated under the provisions of section 111(d) of the Federal Property and Administrative Services Act of 1949, as amended by the Computer Security Act of 1987 (Public Law 100–235), or any other United States law, regulation, or international agreement.

Sec. 8. JUDICIAL REVIEW. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by

a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
April 11, 1994.

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Designating March 23, 1994, as "Education and Sharing Day, U.S.A.". (Apr. 6, 1994; 108 Stat. 282; 2 pages)

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To extend certain compliance dates for pesticide safety training and labeling requirements. (Apr. 6, 1994; 108 Stat. 333; 3 pages)

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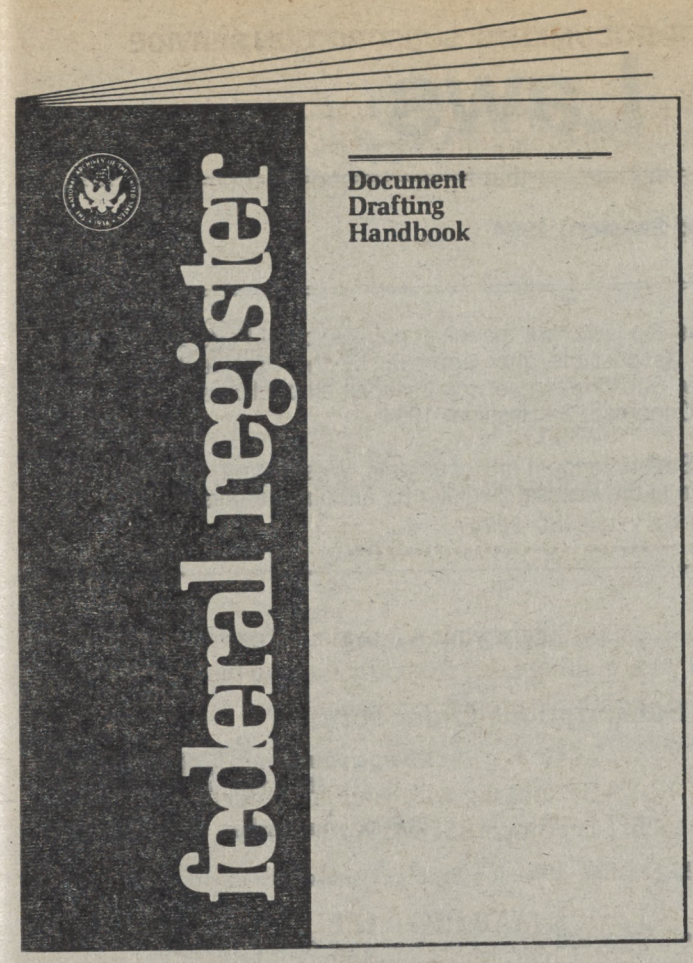
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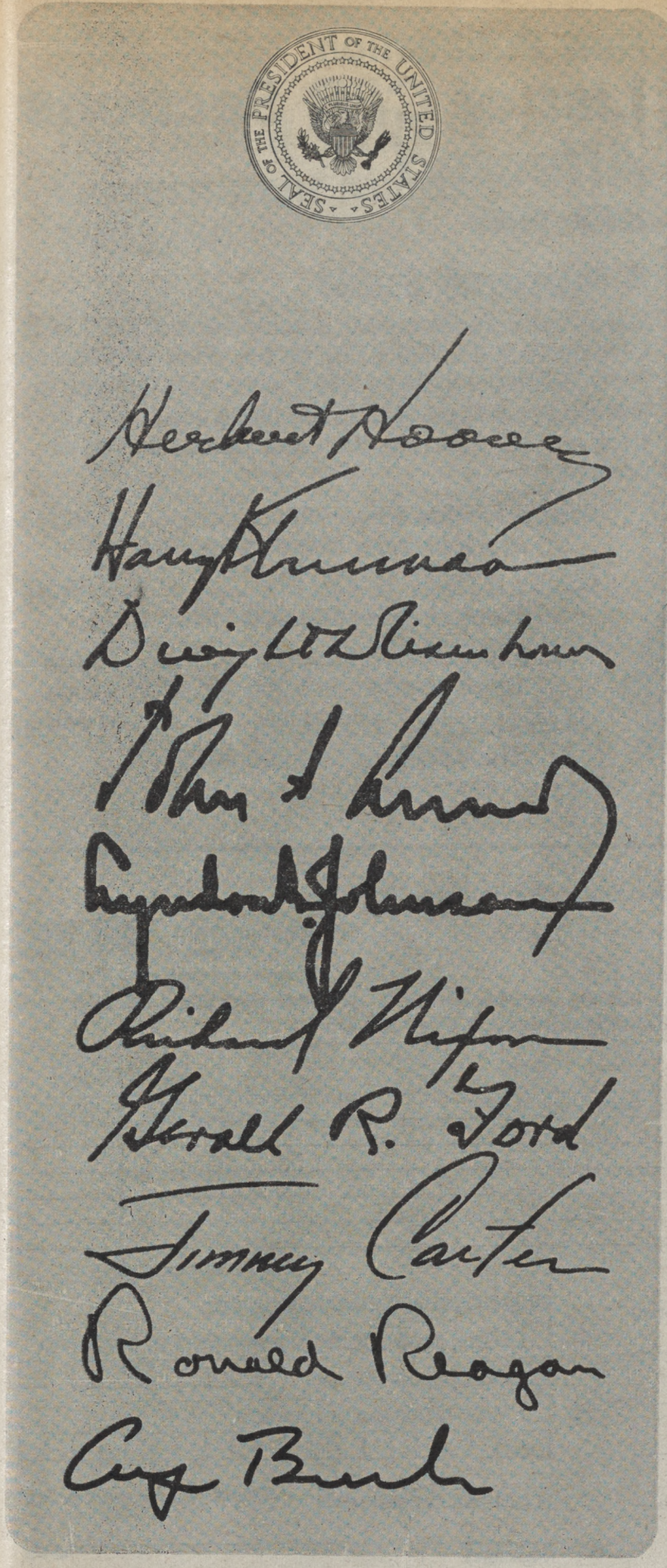
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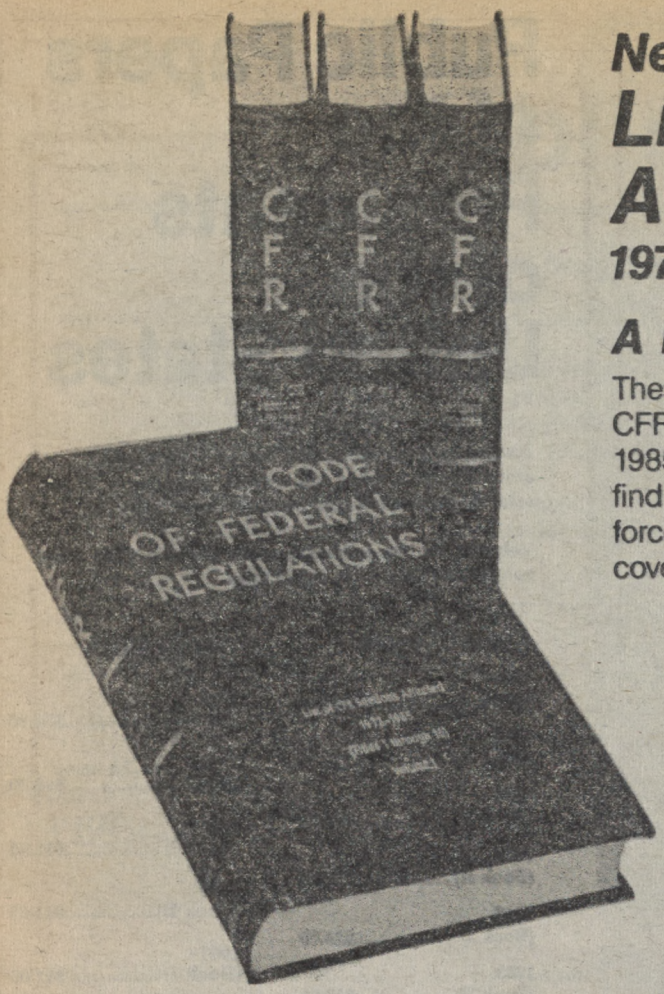
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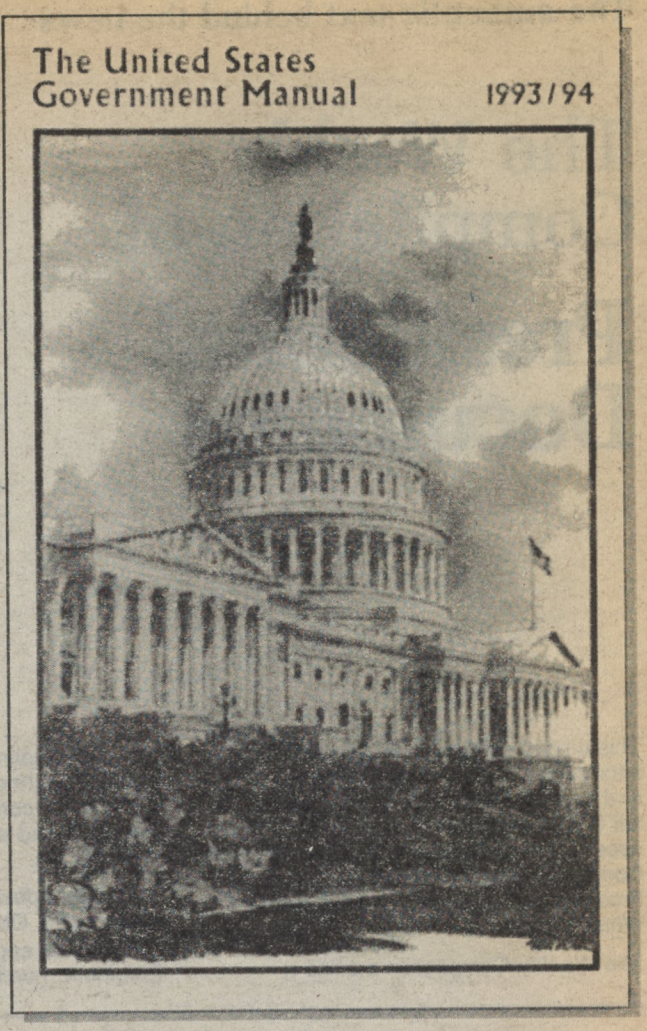
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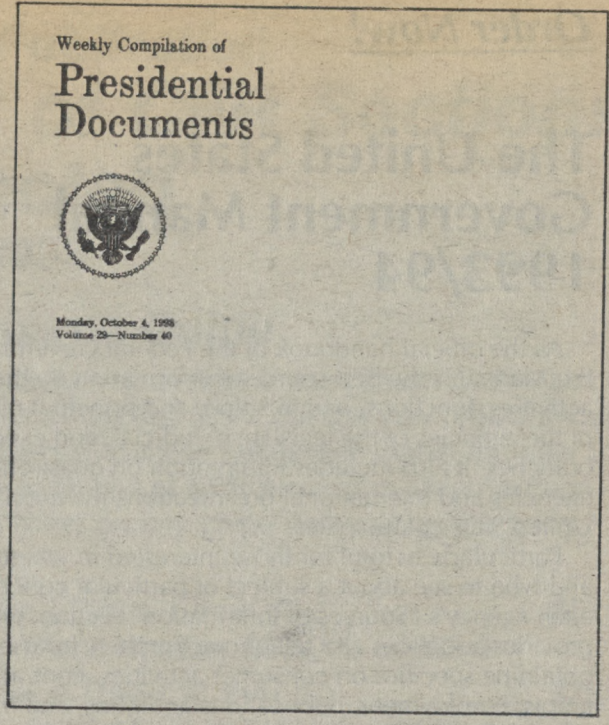
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