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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 93–028–3]

Incorporation by Reference; Plant Protection and Quarantine Treatment Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of direct final rule.

SUMMARY: This document withdraws the direct final rule that would have allowed the use of high temperature forced air treatments for grapefruit and mangoes imported from Mexico. The treatments were to be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations. This action is necessary because we received an adverse written comment in response to the direct final rule.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

In a direct final rule published in the **Federal Register** on March 1, 1994 (59 FR 9613–9614, Docket No. 93–028–2), we notified the public of our intent to allow the use of high temperature forced air treatments for grapefruit and mangoes imported from Mexico. The treatments were to be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations.

We solicited comments concerning the direct final rule for a 30-day period ending March 31, 1994. We stated that the effective date of the proposed amendment would be 60 days after publication of the direct final rule in the **Federal Register**, unless we received written adverse comments or written notice of intent to submit adverse comments by the close of the comment period. We also stated that if we received written adverse comments or written notice of intent to submit adverse comments, we would publish a notice in the **Federal Register** withdrawing the direct final rule before the scheduled effective date and would publish a proposed rule for public comment.

We received one written adverse comment from a representative of the citrus industry. Therefore, we are withdrawing the direct final rule, and, at a later date, we will publish a proposed rule in the **Federal Register**.

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 15th day of April 1994.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–9625 Filed 4–2–94; 8:45 am]

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Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV93–911–1FIR]

Increase in Expenses and Assessment Rates for Marketing Orders Covering Limes and Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of the interim final rule that authorized expenses and established assessment rates for the Florida Lime Administrative Committee and the Avocado Administrative Committee (Committees) under Marketing Order Nos. 911 and 915 for the 1994–95 fiscal year. This final rule authorizes increased levels of expenses for the 1994–95 fiscal year. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: Sections 911.232 and 915.232 are effective April 1, 1994, through March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or Aleck Jonas, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883, telephone: (813) 299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 911 (7 CFR part 911), as amended, regulating the handling of limes grown in Florida; and Marketing Agreement and Order No. 915 (7 CFR part 915), as amended, regulating the handling of avocados grown in Florida. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes and avocados grown in Florida are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable limes and avocados handled during the 1994–95 fiscal year, which began April 1, 1994, through March 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with

law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 40 producers of limes grown in Florida, and 45 handlers who are subject to regulation under the lime marketing order each season. Also, there are approximately 95 producers of avocados grown in south Florida, and approximately 65 handlers who are subject to regulation under the avocado marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the lime and avocado producers and handlers may be classified as small entities.

The marketing orders require that the assessment rates for a particular fiscal year shall apply to all assessable limes and avocados handled from the beginning of such year. An annual budget of expenses is prepared by each Committee and submitted to the Department for approval. The members of the Committees are producers and handlers of the regulated commodities. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing anticipated expenses by expected shipments of limes and avocados. Because these rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. The recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approvals must be expedited so that the Committees will have funds to pay their expenses.

The Florida Lime Administrative Committee met on December 8, 1993, and unanimously recommended 1994–95 marketing order expenditures of $89,697 and an assessment rate of $0.16 per 55-pound bushel of limes. In comparison, 1993–94 marketing year budgeted expenditures were $113,846, which is $24,149 more than the $89,697 recommended for this fiscal year. The assessment rate of $0.16 per bushel remains the same as last year's assessment rate of $0.16. The major budget categories for 1994–95 are $28,000 for administrative staff salaries and $10,100 for employee benefits.

Assessment income for 1994–95 is estimated to total $64,000 based on anticipated fresh domestic shipments of 400,000 55-pound bushels of limes. Interest on savings is expected to add an additional $2,000 to income. The assessment and interest income will have to be augmented by $23,697 from the Committee's reserves to provide adequate funds to cover budgeted expenses. Sufficient reserve funds are available to cover the projected deficit. Funds in the reserve at the end of the 1994–95 fiscal year are estimated to be $250,000. These reserve funds will be within the maximum permitted by the order of three fiscal years' expenses.

The Avocado Administrative Committee also met on December 8, 1993, and unanimously recommended 1994–95 marketing order expenditures of $97,000 and an assessment rate of $0.16 per 55-pound bushel of avocados. In comparison, 1993–94 marketing year budgeted expenditures were $113,846, which is $16,846 more than the $97,000 recommended for this fiscal year. The assessment rate of $0.16 per bushel remains the same as last year's assessment rate of $0.16. The major budget categories for 1994–95 are $28,000 for administrative staff salaries, $15,600 for compliance, and $10,100 for employee benefits.

Assessment income for 1994–95 is estimated to total $96,000 based on anticipated fresh domestic shipments of 600,000 55-pound bushels of avocados. Interest on savings is expected to add an additional $1,000 to income. Sufficient reserve funds are available to cover any unexpected shortfall in projected income. Funds in the reserve at the end of the 1994–95 fiscal year are estimated to be $100,000. These reserve funds will be within the maximum permitted by the order of three fiscal years' expenses.

The expenses and assessment rates were authorized by an interim final rule issued on January 25, 1994, and published in the **Federal Register** (59 FR 5073, February 3, 1994). A 30-day comment period was provided for interested persons. No comments were received.

Each Committee met again on March 9, 1994, and unanimously recommended to increase expenses from $89,697 to $92,197, and from $97,000 to $99,500, for limes and avocados respectively, an increase of $2,500 in expenses for each Committee from the previously authorized amounts.

Neither Committee recommended an increase in their respective assessment rates despite projected deficits of $25,697 and $2,500, for limes and avocados respectively, that will be incurred. Sufficient reserve funds are available, $277,179 and $131,312, for limes and avocados respectively, to cover the increased expenses.

Each Committee budgeted an additional $2,500 for a total of $7,500 for increased monitoring of the water table levels in South Florida. The Committees deem the increase in expenses necessary for the research because of the high cost incurred in obtaining information by an industry that is still recovering from Hurricane Andrew.

While the interim final rule imposed some additional costs on handlers, the costs were in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that finalizing the interim final rule will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing orders covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the programs began on April 1, 1994. The marketing orders require that the rates of assessment for the fiscal year apply to all assessable limes and avocados handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committees at public meetings and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action, with appropriate changes, as a final rule.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are hereby amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 911.232 is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 911.232 Expenses and assessment rate.

Expenses of $92,197 by the Florida Lime Administrative Committee are authorized and an assessment rate of $0.16 per bushel on assessable limes are established for the fiscal year ending March 31, 1995. Unexpended funds may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

3. Section 915.232 is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 915.232 Expenses and assessment rate.

Expenses of $99,500 are authorized and an assessment rate of $0.16 per bushel on assessable avocados is established for the fiscal year ending March 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: April 15, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–9591 Filed 4–20–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 955

[Docket No. FV93–955–3FR]

Vidalia Onions Grown in Georgia; Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations established under the Federal marketing order for Vidalia onions grown in Georgia. This rule allows the Vidalia Onion Committee (Committee) to impose interest charges on handler assessments that are paid late. This rule will encourage handlers to pay assessments in a timely manner. This rule is based on a unanimous recommendation of the Committee, which is responsible for local administration of the order.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: Shoshana Avrishon, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536–S., P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–3610, or FAX (202) 720–5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; (813) 299–4770, or FAX (813) 299–5169.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955) regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The U.S. Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. 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 his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 145 handlers of Vidalia onions that are subject to regulation under the marketing order and approximately 250 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the Vidalia onion handlers and producers may be classified as small entities.

This rule adds a new § 955.142 to Subpart—Administrative Rules and Regulations and is based on a unanimous recommendation of the Committee and other available information.

Section 955.42(f), of the marketing order provides authority for the Committee to impose a late payment or an interest charge or both, on any

handlers who fail to pay assessments in a timely manner.

On November 18, 1993, the Committee met to discuss, among other things, the difficulty it has experienced in collecting assessments from some handlers. It reported that during the past season approximately 20 handlers paid assessments late. When this occurred, handlers who paid their assessments on time were placed in an unfair situation compared to those handlers who failed to do so. The delinquent handlers were able to use the money which was due the Committee for other financial obligations and thus eliminate interest charges on money that they might otherwise have had to borrow to pay those other financial obligations. This money could also have been invested to earn interest for the delinquent handlers.

At the meeting, the Committee determined that it was important to encourage all handlers to pay their assessments promptly, thereby eliminating these inequities and avoiding additional and unnecessary collection costs. The Committee recommended the following procedures for delinquent assessments. If a handler does not pay all assessments due 30 days after the date of billing, the unpaid portion of the account would be considered delinquent and subject to interest charges at the rate of one percent per month. Handlers would be charged interest charges on unpaid assessments and interest charges on any unpaid interest charges until the late obligation is paid in full. The Committee assesses handlers on a monthly basis.

The Committee believes that the interest charge is high enough to discourage handlers from delaying assessment payments. Thus, this rule is expected to encourage all handlers to pay their assessments in a timely manner, and facilitate the collection of funds to pay expenses necessary for the maintenance and functioning of the Committee.

Notice of this action was published in the **Federal Register** on March 17, 1994, (59 FR 12554). The proposed rule provided a 15-day comment period which ended April 1, 1994. No comments were received.

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

After consideration of all relevant information presented, including the Committee's unanimous recommendation and other information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this final rule until 30 days after publication in the **Federal Register** because: (1) Assessments are based on the quantity of Vidalia onions handled by each handler during the fiscal period; (2) the most active part of the 1994 crop shipping season is about to begin and the Committee would like authority to impose interest charges if they are warranted; (3) this action does not impose regulatory burdens on handlers for which they need additional time to comply; and (4) the proposed rule provided a 15-day comment period and no comments were received.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR Part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.142 is added to read as follows:

§ 955.142 Delinquent assessments.

Each handler shall pay interest of one percent per month on any unpaid assessments levied pursuant to § 955.42 and any accrued unpaid interest beginning 30 days after date of billing, until the delinquent handler's assessment plus applicable interest has been paid in full.

Dated: April 15, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–9588 Filed 4–20–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1210

[FV–93–705FR]

RIN 0581–AB08

Watermelon Research and Promotion Plan; Rules and Regulations; Realignment of Districts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the boundaries of five of the seven districts established under the Watermelon Research and Promotion Plan (Plan) to apportion membership on the National Watermelon Promotion Board (Board). This action is necessary to reflect shifts in production since the original districts were established. The Plan requires the periodic realignment of the districts based on shifts in production to ensure equitable representation of producers and handlers on the Board.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2535–S, Washington, DC 20090–6456; telephone (202) 720–9916.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Watermelon Research and Promotion Plan (Plan) (7 CFR part 1210). The Plan is authorized under the Watermelon Research and Promotion Act (7 U.S.C. 4901–4916), hereinafter referred to as the Act.

This rule has been determined to be non-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 1650 of the Act, a person subject to the Plan may file a petition with the Secretary stating that the Plan or any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law and requesting a modification of the Plan or an exemption from the Plan. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

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

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

There are approximately 750 watermelon handlers and 5,000 watermelon producers in the contiguous 48 States of the United States who are subject to the Plan. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000 and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of watermelon handlers and producers may be classified as small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (40 U.S.C. chapter 35), the information collection requirements contained in the Plan have previously been approved by the Office of Management and Budget (OMB) and assigned OMB number 0581–0093, except for the Board nominee background statement form which is assigned OMB number 0505–0001. This final rule adds no additional reporting burden.

Background

Under the Plan, the National Watermelon Promotion Board (Board) administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the market place and to establish, maintain, and expand markets for domestic watermelons. This program is financed by assessments on all producers, except those persons engaged in the growing of less than five acres of watermelons, and handlers of watermelons. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reportings.

Membership on the Board is determined on the basis of two producers and two handlers for each of seven districts established under the Plan. The districts are required to have approximately equal annual production volume. The current districts were based on a three-year average production derived from U.S. Department of Agriculture (USDA) Crop Production Annual Summary Reports for 1979, 1980, and 1981.

These districts are:

District 1—South Florida, including all areas south of State Highway 50.

District 2—North Florida, including all areas north of State Highway 50.

District 3—The States of Alabama and Georgia.

District 4—The States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

District 5—The States of Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, and Wisconsin.

District 6—The State of Texas.

District 7—The States of Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

The Plan provides that two years after its effective date (June 8, 1989) and at least every five years thereafter, the Board should review the districts to determine whether realignment of districts is necessary.

When making such reviews, the Plan specifies that the Board should consider such factors as the most recent three-year USDA production reports or Board assessment reports, if USDA production reports are unavailable, shifts and trends in quantities of watermelons produced, and any other relevant factors.

The Plan further specifies that, as a result of such reviews, the Board may realign the districts subject to the approval of the Secretary. Any such alignment should be recommended by the Board at least six months prior to the date of the call for nominations and should become effective at least 30 days prior to such date.

In accordance with the Plan, the Board appointed a subcommittee to review production and assessment collections in the current districts. During the review, the subcommittee used USDA and State production and marketing reports, as well as data derived from Board assessment reports and field notes. The subcommittee focused on information collected between 1990 and 1992.

After reviewing the available information, the subcommittee recommended that the boundaries of Districts 3 through 7 be changed and that Districts 1 and 2 remain unchanged. In order for each district to represent approximately 3.3 million hundredweights of annual watermelon production, the subcommittee recommended the following: move Mississippi from District 5 to District 3; move Indiana, Kentucky, and Tennessee from District 5 to District 4; move Wyoming, Montana, Idaho, Utah, Nevada, Washington, Oregon, and California north of San Luis Obispo, Kern, and San Bernadino counties from District 7 to District 5; move Arkansas and Louisiana from District 5 to District 6; and move New Mexico from District 5 to District 7.

The subcommittee's recommendation was approved by the Board's executive committee, and the full Board voted by mail ballot. In the mail ballot, 19 members voted "yes," 4 members voted "no," and 5 members did not return a ballot.

The Board submitted its recommendation to the Department. Subsequently, the Department published a proposed rule with request for comments on changing the boundaries of five of the seven districts established under the Plan. The proposed rule was published in the January 28, 1994 issue of the **Federal Register** (59 FR 4013). The comment period ended on February 28, 1994. No comments were received on this proposed rule.

Therefore, this final rule realigns the districts as follows:

District 1—South Florida, including all areas south of State Highway 50.

District 2—North Florida, including all areas north of State Highway 50.

District 3—The States of Alabama, Georgia, and Mississippi.

District 4—The States of Connecticut, Delaware, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

District 5—The States of California—north of San Luis Obispo, Kern, and San Bernardino counties, Colorado, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

District 6—The States of Arkansas, Louisiana, and Texas.

District 7—The State of Arizona, the remainder of the State of California, including San Luis Obispo, Kern, and San Bernardino counties, and the State of New Mexico.

In addition, this rule makes a conforming change to § 1210.401. Section 1210.401 currently states that the districts are defined in § 1210.320 of the Plan. Since this rule defines new district boundaries in a new § 1210.501,

this rule also changes § 1210.401(b) to reflect this new section number.

This final rule will realign the districts for the terms of office that begin on January 1, 1995. This rule affects the eligibility of three current Board members and will necessitate Board member nomination meetings for the realigned Districts 4, 5, 6, and 7 in spring 1994. In the normal cycle of nominating, approximately one-third of the Board members' terms expire each year. Spring 1994 nomination meetings were already planned for Districts 2 and 3.

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

After consideration of all relevant material presented, it is found that this rule, as set forth herein, tends to effectuate the declared policy of the Act.

Pursuant to the provisions of 5 U.S.C., it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because it is necessary that the new district boundaries be used for the nomination meetings for members for the term of office beginning on January 1, 1995.

List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, part 1210, chapter XI of title 7 is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. In § 1210.401(b), the words "1210.320" in the last sentence are revised to read "1210.501".

3. Section 1210.501 is added to read as follows:

§ 1210.501 Realignment of districts.

Pursuant to § 1210.320(c) of the Plan, the districts shall be as follows:

District 1—South Florida, including all areas south of State Highway 50.

District 2—North Florida, including all areas north of State Highway 50.

District 3—The States of Alabama, Georgia, and Mississippi.

District 4—The States of Connecticut, Delaware, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

District 5—The States of California—north of San Luis Obispo, Kern, and San Bernardino counties, Colorado, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

District 6—The States of Arkansas, Louisiana, and Texas.

District 7—The State of Arizona, the remainder of the State of California, including San Luis Obispo, Kern, and San Bernardino counties, and the State of New Mexico.

Dated: April 15, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–9590 Filed 4–20–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[Docket No. FV94–985–1IFR]

Spearmint Oil Produced in the Far West; Expenses and Assessment Rate for the 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Spearmint Oil Administrative Committee (Committee) under M.O. 985 for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning June 1, 1994, through May 31, 1995. Comments received by May 23, 1994 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Robert Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, Room 369, Portland, Oregon 97204, telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 985 (7 CFR part 985) regulating the handling of spearmint oil produced in the Far West. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, spearmint oil produced in the Far West is subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable oil produced during the 1994–95 fiscal year, beginning June 1, 1994, through May 31, 1995. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this rule on small entities.

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

There are approximately 8 handlers of spearmint oil regulated under the marketing order each season and approximately 260 producers of spearmint oil in the Far West. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable oil handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of oil. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on February 23, 1994, and unanimously recommended a total expense amount of $228,705, which is $30,705 more in expenses than in the 1993–94 fiscal year.

The Committee also unanimously recommended an assessment rate of $0.09 per pound for the 1994–95 fiscal year, which is a $0.01 increase in the assessment rate from the previous fiscal year. The assessment rate, when applied to anticipated shipments of 1,727,388 pounds, would yield $155,464.92 in assessment income. This along with $8,000 in interest income and $65,240.08 from the Committee's authorized reserves will be adequate to cover estimated expenses.

Major expense categories for the 1994–95 fiscal year include $94,200 for salaries, $30,000 for market development, and $20,000 for travel. Funds in the reserve at the end of the fiscal year, estimated at $169,166.84, will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee begins June 1, 1994, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oil handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 985.314 is added to read as follows:

§ 985.314 Expenses and assessment rate.

Expenses of $228,705 by the Spearmint Oil Administrative Committee are authorized and an assessment rate of $0.09 per pound on assessable oil is established for the fiscal year ending May 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: April 15, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–9587 Filed 4–20–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 92–044–3]

Brucellosis; Interstate Movement of Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the swine brucellosis regulations by standardizing and simplifying the testing requirements for States seeking validation as swine brucellosis-free, and by extending to 2 years the period during which breeding swine in States must be tested to qualify States for brucellosis-free status. We are also amending the testing requirements for validation and maintenance of brucellosis-free herd status and are restricting the interstate movement of feral swine because of swine brucellosis. These actions are necessary to achieve the goal of swine brucellosis eradication in the United States.

EFFECTIVE DATE: May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Annelli, Epidemiologist, Swine Health Staff, Veterinary Services, APHIS, USDA, room 204, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, 301–436–7781.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*. Brucellosis in swine is characterized by abortion, infertility, orchitis, posterior paralysis, and lameness. The brucellosis regulations in 9 CFR part 78 (referred to below as the regulations) prescribe, among other things, conditions for the interstate movement of swine. The purpose of the regulations is to control, and ultimately to eradicate, brucellosis in the United States.

On July 23, 1993, we published in the **Federal Register** (58 FR 39458–39462, Docket No. 92–044–1) a proposed rule to amend the regulations by standardizing and simplifying the options regarding testing that are available to States seeking validation as swine brucellosis-free, and by extending to 2 years the period during which validated brucellosis-free herds must be tested to maintain brucellosis-free status. We also proposed to restrict the interstate movement of feral swine. On September 8, 1993, we published in the **Federal Register** (58 FR 47222, Docket No. 92–044–2) an editorial correction to the Summary and Background sections of the July 23 proposed rule.

We solicited comments concerning our proposal for a 60-day comment period ending September 21, 1993. We received 3 comments by that date. They were from State and Federal governments and a professional association. All responses were in favor of our proposal. Two commenters, however, suggested modifications or clarifications. Those suggestions are discussed below.

One commenter recommended that we require positive, permanent identification of all domestic and feral swine for traceback purposes. That action is outside the scope of this rulemaking and, therefore, is not discussed in this document. Any changes made as a result of that comment would be proposed as part of a separate rulemaking proceeding.

Another commenter expressed confusion over the proposed rules regarding maintenance of validated brucellosis-free status for herds. This commenter supported the flexibility of the testing schedules we proposed, but was uncertain about the status of herds for which all testing had not been completed at the end of the 12-month validation period. In addition, the commenter recommended that the Administrator approve alternative testing schedules that, in exceptional circumstances, might extend to 420 days.

We agree with the commenter that the testing schedule, as proposed, is unclear. It was our intention to give producers a measure of flexibility within the 365-day testing cycle for the incremental complete herd test (CHT), so we proposed to allow the 25-percent incremental tests to be conducted every 80–105 days, and the 10-percent incremental tests every 25–35 days. However, if a producer were to conduct each increment of the 25-percent incremental CHT on the 105th day, which the proposed regulations would have allowed, the testing would not be completed until 420 days had passed, thus leaving a 2-month gap between the end of the 365-day validation period and the completion of the incremental testing required to maintain validation. While the commenter agreed that there should be some measure of flexibility in the testing cycle, she was concerned about whether a herd would retain its validated brucellosis-free status during that time.

In order to address the commenter's concerns and clarify the intent of the regulations, we have rewritten portions of paragraph (b) of the definition of *validated brucellosis-free herd*. The new text of paragraph (b)(1), "Validation," makes it clear that the 25-percent incremental testing is to be conducted at 90-day intervals, thus ensuring that the testing is completed within the 365-day testing cycle. To allow some flexibility, though, we have included a provision under which the Administrator could give a producer an additional 15 days in which to conduct an incremental test when unforeseen circumstances warrant an extension. Even if an extension were granted, however, the next test would be due on the day specified on the original schedule, not 90 days after the test for which an extension was granted was actually conducted. This way, the 25-percent incremental testing would be kept on schedule and completed within the 365-day testing cycle (unless an extension were granted for the final incremental test, which would mean the testing would be completed within 375 days).

The new text of paragraph (b)(2), which concerns maintenance of validated-free status, provides that, when unforeseen circumstances warrant such an extension, the Administrator may approve an alternative testing schedule under which an incremental CHT would be completed within 420 days. A herd tested under an alternative testing schedule would retain its validation until the testing has been completed. This provides the flexibility sought by the commenter by allowing a producer to maintain validated brucellosis-free status in situations where circumstances make it impossible to complete the required herd testing within the specified 365-day testing cycle.

In addition to the changes discussed above, we are making one nonsubstantive editorial change to the rule.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

The changes in this rule should result in direct benefits for producers through testing requirements either being relaxed or removed entirely, and in indirect benefits through more standardized testing procedures. Requiring fewer tests, which cost an estimated $5 per head, will not only save herd owners money, but will also be less disruptive to normal herd operations. Similarly, savings will be realized by the removal of the requirement for routine herd testing in validated brucellosis-free States.

The more stringent standard for validated brucellosis-free State status will disqualify any State with more than one confirmed brucellosis-infected herd. We expect that this new standard will provide States or producers with an incentive to depopulate the relatively few brucellosis-infected herds of domestic swine that, although sources of disease perpetuation and spread, are currently tolerated in some States. We expect, therefore, that this provision will expedite the eradication of swine brucellosis in domestic herds in all States in the United States. Once eradication has been achieved, as has been done in 40 States, fewer tests must be conducted. Producers will immediately benefit, both operationally and economically, from the reduced testing requirements.

More than 90 percent of all domestic swine producers are classified as small businesses. Based on the 1991 marketing year figures, sales of fewer than 4,000 head place a producer in the "small business" category (gross receipts below $500,000). Of the

238,819 swine producers in the United States identified in the most recent Census of Agriculture, fewer than 24,000, or 10 percent, sell more than 1,000 head per year; precise figures above 1,000 are not available. We expect that large and small producers alike will benefit to a limited extent from relaxed testing requirements in States applying for validation and in States already validated as swine brucellosis-free. Producers in other States will be unaffected by these changes to the regulations.

Feral swine have a capacity for harboring and transmitting swine brucellosis to domestic herds. Feral swine moved interstate (not intended for immediate slaughter) are presumably sold to hunting preserves or at livestock auctions. However, State records indicate minimal interstate movement of feral swine. Therefore, it is likely that few small entities will be affected by the provisions of this final rule regarding the interstate movement of feral swine.

We know of no other small entities that might be affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule will be submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the term *Herd blood test* is amended by removing and reserving paragraph (b); the terms *Validated brucellosis-free herd* and *Validated brucellosis-free State* are revised; and the terms *Complete herd test (CHT), Confirmatory test, Feral swine, Market swine test (MST) reactor, Monitored-negative feral swine population,* and *Swine brucellosis* are added, in alphabetical order, as follows:

§ 78.1 Definitions.

* * * * *

Complete herd test (CHT). An official swine brucellosis test of all swine on a premises that are 6 months of age or older and maintained for breeding purposes.

Confirmatory test. A follow-up test to verify any official test results. Confirmatory tests include the standard tube test, the Rivanol test, the complement fixation test (CF), the particle concentration fluorescence immunoassay (PCFIA), the semen plasma test, and the standard plate test.

* * * * *

Feral swine. Free-roaming swine. Formerly free-roaming swine could qualify for reclassification as domestic swine upon testing negative to an official swine brucellosis test after a period of at least 60 days' confinement in isolation from other feral swine.

* * * * *

Market swine test (MST) reactor. Market swine test swine with a positive reaction to a swine brucellosis confirmatory test or other official test, if no confirmatory test is performed.

* * * * *

Monitored-negative feral swine population. Feral swine indicating no evidence of infection (indicators would include positive blood tests or clinical signs, such as abortion) and originating from a specified, geographically isolated area (a forest area, hunting preserve, or swamp, for example) may be classified by the designated epidemiologist as a monitored-negative feral swine population.

* * * * *

Swine brucellosis. The communicable disease of swine caused by *Brucella suis* (*B. suis*) biovar 1 or 3.

* * * * *

Validated brucellosis-free herd. (a) A swine herd not known to be infected with swine brucellosis, located in a validated brucellosis-free State; or

(b) a swine herd in a State that has not been validated as brucellosis-free, provided the herd meets the conditions for validation, as follows:

(1) *Validation.* A swine herd may be validated as brucellosis-free if it has been found brucellosis negative after either a complete-herd test (CHT) or an incremental CHT. The incremental CHT may be conducted by testing all breeding swine 6 months of age or older with negative results within 365 days, either in four 25-percent increments, with those tests being conducted on the 90th, 180th, 270th, and 360th days of the testing cycle, or in 10-percent increments every 25–35 days until 100 percent of those swine have been tested. In cases where unforseen circumstances warrant such action, the Administrator may approve an extension of up to 15 days of the date on which a test under the 25-percent incremental herd test is to be conducted, thus allowing a test to be conducted no later than the 105th, 195th, 285th, or 375th day of the testing cycle. No swine may be tested twice during the testing cycle to comply with either the 25 percent requirement or the 10 percent requirement. No further testing is required once 100 percent of the breeding swine have been tested. After all breeding swine have tested brucellosis negative, a herd may be validated as brucellosis-free. Unless the Administrator has approved an alternative testing schedule, which might extend the testing cycle, a herd retains validated brucellosis-free status for a maximum of 365 days.

(2) *Maintaining validation.* Validation may be continuously maintained if a complete herd test (CHT) is performed once every 365 days, with negative results, or an incremental CHT is performed. The incremental CHT may be conducted by testing all breeding swine 6 months of age or older, with negative results, within 365 days in either four 25-percent increments, with those tests being conducted on the 90th, 180th, 270th, and 360th days of the testing cycle, or in 10-percent increments every 25–35 days until 100 percent of those swine have been tested. In cases where unforeseen circumstances warrant such action, the Administrator may approve an alternative testing schedule under which the 25 percent or 10 percent incremental CHT would be completed, with negative results, within 420 days, during which time the herd's validated brucellosis-free status would be continued. No swine may be tested

twice during the testing cycle to comply with these requirements. No further testing is required once 100 percent of the breeding swine have been tested.

Validated brucellosis-free State. A State may apply for validated-free status when:

(a) Any herd found to have swine brucellosis during the 2-year qualification period preceding the application has been depopulated. More than one finding of a swine brucellosis-infected herd during the qualification period disqualifies the State from validation as brucellosis-free; and

(b) During the 2-year qualification period, the State has completed surveillance, annually, as follows:

(1) *Complete herd testing.* Subjecting all swine in the State that are 6 months of age or older and maintained for breeding purposes to an official swine brucellosis test; or

(2) *Market swine testing.* Subjecting 20 percent of the State's swine 6 months of age or older and maintained for breeding purposes to an official swine brucellosis test, and demonstrating successful traceback of at least 80 percent of market swine test (MST) reactors to the herd of origin. Blood samples may be collected from MST swine if the swine can be identified to their herd of origin, in accordance with § 71.19(b) of this subchapter. All MST reactor herds are subject to a CHT within 30 days of the MST laboratory report date, as determined by a designated epidemiologist; or

(3) *Statistical analysis.* Demonstrating, by a statistical analysis of all official swine brucellosis test results (including herd validation, MST, change-of-ownership, diagnostic) during the 2-year qualification period, a surveillance level equivalent or superior to CHT and MST testing programs discussed in this paragraph.

(c) To maintain validation, a State must annually survey at least 5 percent of its breeding swine, and demonstrate traceback to herd of origin of at least 80 percent of all MST reactors. A State must demonstrate its continuing ability to meet the criteria set forth in paragraph (c) of this definition within 36–40 months of receiving validated brucellosis-free State status to retain that status.

* * * * *

§ 78.30 [Amended]

3. In § 78.30, paragraph (a) is amended by removing the words "and sows" after "brucellosis exposed swine" and adding, in their place, the words "feral swine, sows,".

4. In § 78.30, a new paragraph (c) is added to read as follows:

§ 78.30 General restrictions.

* * * * *

(c) (1) Feral swine may be moved interstate directly to slaughter if they do not come into physical contact with any domestic swine or other livestock.

(2) Feral swine from monitored-negative populations may be moved interstate other than directly to slaughter if accompanied by a permit issued by the APHIS representative or the State animal health official in the State of origin.

(3) Feral swine found negative to an official test within the 30 days prior to the interstate movement may be moved interstate other than directly to slaughter if accompanied by a permit issued by the APHIS representative or the State animal health official in the State of origin.

Done in Washington, DC, this 15th day of April 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–9593 Filed 4–20–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–115–AD; Amendment 39–8875; AD 94–08–04]

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, and C–9 (military) airplanes, that currently requires inspections to detect cracking in the skin and doublers around the upper anticollision light cutout, and repair, if necessary. This amendment expands the applicability to include additional Model DC–9–80 series airplanes and Model MD–88 airplanes, and requires the performance of stress coining procedures on the plate nut clearance holes or installation of shims and an external doubler. This amendment is prompted by a report that stress coining procedures were not performed on the plate nut clearance holes of the upper anticollision light doublers during production of certain airplanes. The actions specified by this AD are intended to prevent crack growth in the doublers, which could result in damage to the adjacent structure, and subsequent loss of cabin structural integrity.

DATES: Effective May 23, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Hempe, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5224; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding all or portions of two existing AD's was published in the Federal Register on October 7, 1993 (58 FR 52240).

That action proposed to supersede AD 85–19–03 R2, Amendment 39–5844 (53 FR 3738, February 9, 1988), which is applicable to Model DC–9 and Model DC–9–80 series airplanes, and C–9 (military) airplanes, having fuselage numbers 1 through 1371. That AD requires repetitive inspections, at intervals of 3,500 landings, to detect cracking in the skin and doublers around the upper anticollision light cutout, and repair, if necessary. That AD also provides for the performance of stress coining procedures on the plate nut clearance holes in the upper anticollision light cutout as optional terminating action for the repetitive inspection requirement. The notice proposed to supersede this AD to expand its applicability to include affected airplanes through fuselage number 2042, and to increase the repetitive inspection interval to 4,500 landings.

The notice also proposed to supersede portions of AD 90–18–03, Amendment 39–6701 (55 FR 34704, August 24, 1990), which is applicable to Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes. Among other things, that AD currently requires repetitive inspections and eventual modification of the plate nut clearance holes in the upper doublers. The notice proposed to expand the applicability of those requirements to include additional affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters support the proposed rule.

One commenter notes that, in the Discussion section of the proposal, the description of the applicability of AD 90–18–03 was confusing. The commenter suggests that a more succinct way of stating applicability for the existing AD would be to state that the requirements of AD 90–18–03 are applicable to "all Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 airplanes, and to Model DC–9–80 series airplanes and MD–88 airplanes, fuselage numbers 1 through 1371." The proposal stated that AD 90–18–03 is applicable to "all Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 airplanes, but only to certain Model DC–9–80 series airplanes and MD–88 airplanes, namely, those having fuselage numbers 1248 through 1371." The FAA finds that either way of describing applicability for the requirements of AD 90–18–03 adequately summarizes the applicability of the existing AD.

This same commenter indicates that there was an error in the description of the service bulletin in the Discussion section of the proposal. The commenter notes that the description of the service bulletin, which is referenced in the proposal as the appropriate source of service information, omitted Model DC–9–80 series airplanes. The FAA concurs that an error was made in the Discussion section of the proposal. However, the entire remainder of the AD, including the applicability of the rule, as well as paragraphs (b) and (c) of the rule, clearly states that the rule is applicable to Model DC–9–80 series airplanes. Therefore, no change to the final rule is necessary.

This commenter further requests that the number of airplanes presented in the cost estimate in the preamble to the notice be verified. The commenter notes that, since the applicability of the proposal is for airplanes having fuselage numbers 1 through 2042, the estimated number of airplanes affected by the proposal could not possibly be 1,500 airplanes, as stated in the proposal. The FAA concurs that the number of affected airplanes was inaccurately estimated. The economic impact information, below, has been revised to reflect this increase in the number of affected airplanes.

Further, this commenter notes that the fuselage number referenced in the Discussion section of the proposal contained a typographical error. The FAA concurs. The FAA acknowledges this typographical error and corrects it by stating that the stress coining procedure on the plate nut clearance holes in the upper anticollision light doublers has not been accomplished during production of Model DC–9–80 series airplanes and Model MD–88 airplanes having fuselage numbers 1372 through 2042. The fuselage numbers were repeatedly referenced correctly in numerous other parts of the AD, including paragraph (c). Therefore, the FAA finds that revision to the final rule is unnecessary.

This same commenter requests that paragraphs (a), (b), and (c) of the proposal be revised to correctly reference the McDonnell Douglas DC–9 Service Sketch. The FAA concurs that references to the sketch number contained a typographical error. Therefore, paragraphs (a), (b), and (c) of the final rule have been revised to correctly reference the sketch as McDonnell Douglas DC–9 Service Sketch 3626E.

Two commenters request that the proposal be revised to include a second alternative that would terminate the requirement for the repetitive inspections, as specified in the referenced service bulletin, McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993. The commenters state that the service bulletin provides two terminating actions: one, to stress coin the holes in the doubler (as stated in the proposal), or two, to install shims and an external doubler on the anticollision light cutout. The FAA concurs. The FAA has reviewed the procedures described in the service bulletin to install shims and an external doubler and has determined that this installation would preclude cracking in the skin and doublers around the upper anticollision light cutout on the fuselage. Therefore, paragraphs (a), (b), and (c) of the final rule have been revised to include the option of installing shims and an external doubler on the anticollision light cutout, which would terminate the requirement for the repetitive inspections required by these paragraphs.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,042 McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. Of this number, approximately 1,022 are of U.S. registry. The FAA estimates that 440 airplanes of U.S. registry are currently affected by AD 85–19–03 R2 and AD 90–18–03, while approximately 582 additional U.S.-registered airplanes will be affected by the requirements of this AD.

The costs associated with the inspection requirements will take approximately 10 work hours per airplane per inspection, at an average labor rate of $55 per airplane per inspection cycle. Based on these figures, the total cost impact of these inspection requirements on U.S. operators is estimated to be $550 per airplane per inspection cycle. For operators currently affected by AD 85–19–03 R2 and AD 90–18–03, there will be no new costs associated with these inspection requirements. For some of these operators, the economic burden will actually be lessened since the interval for repetitive inspection will be increased from the previous 3,500 landings to 4,500 landings in this AD. For the 582 newly affected airplanes of U.S. registry, the total cost impact of the inspection requirements will be $320,100 per inspection cycle.

The costs associated with the stress coining procedure that is required by this AD entail approximately 4.6 work hours per airplane, at an average labor rate of $55 per work hour. The costs of required parts is expected to be negligible. Based on these figures, the total cost impact of the stress coining procedure requirements on U.S. operators is estimated to be $258,566, or $253 per airplane. Of this total amount, $147,246 represents the additional costs applicable to the 582 newly affected airplanes of U.S. registry.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Additionally, the number of required work hours discussed above is presented as if the accomplishment of the actions in this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances, as will the costs associated with special airplane scheduling.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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 removing amendment 39–5844 (53 FR 3738, February 9, 1988), and by adding a new airworthiness directive (AD), amendment 39–8875, to read as follows:

94–08–04 McDonnell Douglas: Amendment 39–8875. Docket 93–NM–115–AD. Supersedes AD 85–19–03 R2, Amendment 39–5844.

Applicability: All Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes and Model MD–88 airplanes, having fuselage numbers 909 through 2042, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Inspections, repairs, or modifications (stress coining or installation of shims and an external doubler) accomplished prior to the effective date of this amendment in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, original issue through Revision 6; or McDonnell Douglas DC–9 Service Bulletin 53–216, original issue through Revision 3; are considered acceptable for compliance with the applicable action specified in this amendment.

To prevent crack growth in the doubler, which could result in damage to the adjacent structure, accomplish the following:

(a) For all Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes: Prior to the accumulation of 30,000 total landings or within 4,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracking in the skin and doublers around the upper anticollision light cutout on the fuselage, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993.

(1) If no cracking is detected, accomplish the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Repeat that inspection thereafter at intervals not to exceed 4,500 landings until either one of the procedures required by paragraph (a)(1)(ii) of this AD is accomplished; and

(ii) Prior to the accumulation of 100,000 total landings or within 4 years after September 24, 1990 (the effective date of AD 90–18–03, Amendment 39–6701), whichever occurs later, either stress coin the plate nut clearance holes, or install shims and an external doubler; in accordance with Condition I, Phase 2, of the accomplishment instructions of McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993. Accomplishment of either the stress coining procedure, or installing shims and an external doubler, constitutes terminating action for the repetitive inspection requirement of paragraph (a) of this AD.

(2) If any cracking is detected as a result of any inspection required by this paragraph, prior to further flight, accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) For cracks specified as Condition II and Condition III in McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993: Repair in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993; McDonnell Douglas SB 09530186; or McDonnell Douglas DC–9 Service Sketch 3626E. Accomplishment of any one of these repair procedures constitutes terminating action for the requirements of this AD.

(ii) For cracks specified as Condition IV in McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993: Repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) For Model DC–9–81, DC–9–82, and DC–9–83 series airplanes having fuselage numbers 909 through 1247 inclusive: Prior to the accumulation of 30,000 total landings or within 4,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracking in the skin and doublers around the upper anticollision light cutout on the fuselage, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993.

Note 2: Although fuselage numbers 909 through 1247 include Model DC–9–30 and –50 series airplanes, those airplanes are addressed in paragraph (a) of this AD, and as such, operators of those airplanes must accomplish the requirements of paragraph (a) of this AD.

(1) If no cracking is detected, accomplish the requirements of paragraphs (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Repeat that inspection thereafter at intervals not to exceed 4,500 landings until either one of the procedures required by paragraph (b)(1)(ii) of this AD is accomplished; and

(ii) Prior to the accumulation of 75,000 total landings or within 4 years after September 24, 1990 (the effective date of AD 90–18–03, Amendment 39–6701), whichever occurs later, either stress coin the plate nut clearance holes, or install shims and an external doubler, in accordance with Condition I, Phase 2, of the accomplishment instructions of McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993. Accomplishment of either the stress coining procedure, or installing shims and an external doubler, constitutes terminating action for the repetitive inspection requirements of paragraph (b) of this AD.

(2) If any cracking is detected as a result of any inspection required by this paragraph, prior to further flight, accomplish the requirements of paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For cracks specified as Condition II and Condition III in McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993: Repair in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993; McDonnell Douglas SB 09530186; or McDonnell Douglas DC–9 Service Sketch 3626E. Accomplishment of any one of these repair procedures constitutes terminating action for the requirements of this AD.

(ii) For cracks specified as Condition IV in McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993: Repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(c) For Model DC–9–81, DC–9–82, DC–9–83, and DC–9–87 series airplanes, and Model MD–88 airplanes, having fuselage numbers 1248 through 2042 inclusive: Prior to the accumulation of 30,000 total landings or within 4,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracking in the skin and doublers around the upper anticollision light cutout on the fuselage, in accordance with McDonnell Douglas MD–80 Service Bulletin 53–216, Revision 3, dated April 23, 1993.

(1) If no cracking is detected, accomplish the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repeat that inspection thereafter at intervals not to exceed 4,500 landings until either one of the procedures required by paragraph (c)(1)(ii) of this AD is accomplished; and

(ii) Prior to the accumulation of 75,000 total landings or within 4 years after September 24, 1990 (the effective date of AD 90–18–03, Amendment 39–6701), whichever occurs later, either stress coin the plate nut clearance holes in accordance with Condition I, Phase 2, of McDonnell Douglas MD–80 Service Bulletin 53–216, Revision 3, dated April 23, 1993; or install shims and an external doubler, in accordance with the accomplishment instructions of that service bulletin. Accomplishment of either the stress coining procedure, or installing shims and an external doubler, constitutes terminating action for the repetitive inspection requirement of paragraph (c) of this AD.

(2) If any cracking is detected as a result of any inspection required by this paragraph, prior to further flight, accomplish the requirements of paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable.

(i) For cracks specified as Condition II and Condition III in McDonnell Douglas DC–9 Service Bulletin 53–216, Revision 3, dated April 23, 1993: Repair in accordance with McDonnell Douglas DC–9 Service Bulletin 53–216, Revision 3, dated April 23, 1993; McDonnell Douglas SB 09530186; or McDonnell Douglas DC–9 Service Sketch 3626E. Accomplishment of any one of these repair procedures constitutes terminating action for the requirements of this AD.

(ii) For cracks specified as Condition IV in McDonnell Douglas DC–9 Service Bulletin 53–216, Revision 3, dated April 23, 1993: Repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(d) This AD supersedes that portion of AD 90–18–03, Amendment 39–6701, which requires inspection and modification in accordance with the following McDonnell Douglas service bulletins:

DC–9 Service Bulletin 53–186
MD–80 Service Bulletin 53–216

(e) 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 ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) 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.

(g) The actions shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 53–186, Revision 6, dated May 13, 1993 (for Model DC–9 series airplanes), or McDonnell Douglas MD–80 Service Bulletin 53–216, Revision 3, dated April 23, 1993 (for Model DC–9–80 series airplanes), as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. Copies may be inspected 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 23, 1994.

Issued in Renton, Washington, on April 1, 1994.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8325 Filed 4–20–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–169–AD; Amendment 39–8873; AD 94–08–02]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model ATP series airplanes, that requires modification of the wiring for the electric-powered disconnect unit for the elevator control system and a subsequent functional test of the elevator control system. This amendment is prompted by an in-service report of damaged wire insulation in the electrical power circuit for the elevator disconnect unit, which resulted in grounding of the circuit and consequent uncommanded operation of the disconnect unit. The actions specified by this AD are intended to prevent uncommanded operation of the elevator disconnect unit, which would result in single elevator operation and, consequently, reduced controllability of the airplane.

DATES: Effective May 23, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Jetstream Model ATP series airplanes was published in the **Federal Register** on December 6, 1993 (58 FR 64199). That action proposed to require modification of the wiring for the electric-powered disconnect unit for the elevator control system and a subsequent functional test of the elevator control system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposal.

Since the issuance of the notice, Jetstream Aircraft Limited has issued Revision 2 of Service Bulletin ATP–27–49–1023A, dated November 23, 1993. This revision of the service bulletin is essentially identical to Revision 1, which was referenced in the notice, but contains corrections of certain minor errors. It also excludes two airplanes (Aircraft Constructor's numbers 2046 and 2047) from the effectivity listing, since these airplanes are not subject to

the addressed unsafe condition. The FAA has revised the applicability of the final rule to exclude these two airplanes. The FAA has also revised paragraph (a) of the final rule to include a reference to Revision 2 of the service bulletin as an additional source of appropriate service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $25 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,650, or $465 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

94–08–02 Jetstream Aircraft Limited (Formerly British Aerospace): Amendment 39–8873. Docket 93–NM–169–AD.

Applicability: Model ATP airplanes, Aircraft Constructor's numbers 2002 through 2045, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded operation of the elevator disconnect unit, which would result in single elevator operation and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the wiring for the electric-powered disconnect unit for the elevator control system (Modification 10234A); and, prior to further flight after modification, perform a functional test of the elevator control system; in accordance with BAe ATP Service Bulletin ATP–27–49–10234A, Revision 1, dated August 14, 1993, or Revision 2, dated November 23, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with 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) The modification shall be done in accordance with the following BAe ATP service bulletins, which contain the following list of effective pages:

Service bulletin number and date	Page No.	Revision level shown on page	Date shown on page
ATP–27–49–10234A, Revision 1, August 14, 1993.	1–5, 7, 9, 11, 13, 15	1	August 14, 1993
	6, 8, 10, 12, 14	(These pages are not used.)	(These pages are not used.)
ATP–27–49–10234A, Revision 2, November 23, 1993.	1–5, 7, 9, 11, 13	2	November 23, 1993
	6, 8, 10, 12	(These pages are not used.)	(These pages are not used.)

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 23, 1994.

Issued in Renton, Washington, on March 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8176 Filed 4–20–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 91–ANE–45; Amendment 39–8862; AD 94–07–04]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–80A series turbofan engines, that requires an inspection for cracks in the stage 1 high pressure turbine (HPT) disk rim bolt holes. This amendment is prompted by a report of an uncontained stage 1 HPT disk failure, which resulted in an aborted takeoff. The actions specified by this AD are intended to prevent an uncontained stage 1 HPT disk failure, which could result in an inflight engine shutdown, aborted takeoff, or damage to the aircraft.

DATES: Effective May 23, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80A series turbofan engines was published as a notice of proposed rulemaking (NPRM) in the Federal Register on January 9, 1992 (57 FR 857). That action proposed to require a one-time inspection for cracks in the stage 1 high pressure turbine (HPT) disk rim bolt holes in accordance with GE Commercial Engine Service Memorandum (CESM) No. 27, dated September 27, 1991.

Since the issuance of that NPRM, GE issued CF6–80A Service Bulletin (SB) No. 72–604, Revision 3, dated April 8, 1993, which revised the inspection program based on additional investigation findings on the reported disk failure. A Supplemental NPRM was published in the Federal Register on November 3, 1993 (58 FR 58667), which proposed to require an inspection for cracks in the stage 1 HPT disk rim bolt holes in accordance with the revised inspection program described in GE CF6–80A SB No. 72–604, Revision 3, dated April 8, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter states that previous revision levels of GE CF6–80A SB No. 72–604, Revision 3, dated April 8, 1993, should be incorporated by reference. The FAA does not concur. Compliance paragraph (d) of the proposed rule already addresses inspections performed in accordance with these previous revision levels.

One commenter states that the AD should not refer to a specific revision of the GE SB, but instead, use the phrase "latest revision" when citing the SB. The FAA does not concur. When incorporating a manufacturer's SB into an AD, the actual revision level and issue date of the SB must be specified. The FAA can not review and approve the technical contents of a document that has not yet been issued. Future revisions to a SB incorporated into an AD that do not substantively change the compliance requirements or times, may carry FAA approval as alternate methods of compliance to allow operators the greatest flexibility in performing the requirements of an AD.

One commenter states that the inspection thresholds should be based on cycles since new on the issuance of GE CF6–80A SB No. 72–604, Revision 2, dated July 2, 1992, rather than the effective date of the AD to be consistent with their current inspection program. The FAA does not concur. This recommendation might cause an undue burden to another operator based on the anticipated publication date of this amendment.

The FAA has determined that the compliance end date of December 31, 1993, noted in compliance paragraph (a)(3) of the NPRM, is inconsistent with the anticipated publication date of this amendment, and as such may place undue burden on operators. The NPRM proposed a compliance period of 60 days to accomplish the required actions based on the anticipated publication date of the AD at the time the NPRM was published. Therefore, the compliance end date in compliance paragraph (a)(3) of this final rule has been revised to 90 days after date of publication in the Federal Register. This time period is comprised of the 30 day period after publication and prior to the effective date plus 60 days.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 154 GE CF6–80A series engines of the affected design in the worldwide fleet. The FAA estimates that 48 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 232 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $172,800 per engine. Based on these figures, and assuming all inspected disks require replacement, the total cost impact of the AD on U.S. operators is estimated to be $8,906,880.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

94–07–04 General Electric Company: Amendment 39–8862. Docket 91–ANE–45.

Applicability: General Electric Company (GE) CF6–80A series turbofan engines installed on but not limited to, Boeing 767 series and Airbus A310 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained stage 1 high pressure turbine (HPT) disk failure, which could result in an inflight engine shutdown, rejected takeoff, or damage to the aircraft, accomplish the following:

(a) Eddy current inspect (ECI) for cracks stage 1 HPT disks, Part Numbers (P/N) 9234M67G12, 9234M67G13, 9234M67G14, 9234M67G15, 9234M67G16, 9234M67G22, 9234M67G24, 9367M45G01, 9367M45G02, 9367M45G03, and 9367M45G04, regardless of serial number; and stage 1 HPT disks, P/N 9362M58G02, with serial numbers listed in paragraph 1.A. of GE CF6–80A Service Bulletin (SB) No. 72–604, Revision 3, dated April 8, 1993; in accordance with the accomplishment instructions of GE CF6–80A SB No. 72–604, Revision 3, dated April 8, 1993, as follows:

(1) For disks that have accumulated less than 3,000 cycles since new (CSN) on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit after accumulating 3,000 CSN, but not to exceed 4,500 CSN.

(2) For disks that have accumulated 3,000 CSN or more, but less than 4,000 CSN on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit, but not to exceed 4,500 CSN.

(3) For disks that have accumulated 4,000 CSN or more, but less than 9,500 CSN on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit, or prior to July 20, 1994, whichever occurs earlier.

(4) For disks that have accumulated 9,500 CSN or more on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit.

(b) ECI stage 1 HPT disks, P/N 9362M58G02, with serial numbers *not* listed in paragraph 1.A. of GE CF6–80A SB No. 72–604, Revision 3, dated April 8, 1993, in accordance with the accomplishment instructions of GE CF6–80A SB No. 72–604, Revision 3, dated April 8, 1993, at the next exposure of the stage 1 HPT disk at the piece part level.

(c) Remove from service disks found cracked, and replace with serviceable parts. Inspect replacement disks in accordance with paragraph (a) or (b) of this AD, if applicable.

(d) Disks referenced in paragraph (a) or (b) of this AD that have been inspected in accordance with Commercial Engine Service Memorandum No. 27, dated September 27, 1991, or any revision level of GE CF6–80A SB No. 72–604, prior to the effective date of this AD, and whose CSN at the time of inspection was 3,000 or more, meet the inspection requirements of paragraph (a) and (b) of this AD.

(e) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of any major flange.

(f) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office. NOTE: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(h) The inspection, and replacement, if necessary, shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
GE CF6–80A SB No. 72–604	1	3	Apr. 8, 1993.
	2	2	July 2, 1992.
	3	3	Apr. 8, 1993.
	4–12	2	July 2, 1992.
Total Pages: 12..			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 23, 1994.

Issued in Burlington, Massachusetts, on March 23, 1994.

Marc Bouthillier,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–7785 Filed 4–20–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–158–AD; Amendment 39–8870; AD 94–07–12]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Jetstream Model ATP series airplanes, that requires inspections to detect fatigue-related cracking and loose rivets in the subframe yoke assemblies of the quick engine change units (QECU) on both wings; replacement of rivets; and repair or replacement of yoke assemblies, if necessary. This amendment is prompted by in-service and fatigue test reports of cracking in the yoke of a QECU subframe. The actions specified by this AD are intended to prevent loss of structural integrity of the engine mount.

DATES: Effective May 23, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules

Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Jetstream Model ATP airplanes was published in the **Federal Register** on November 1, 1993 (58 FR 58305). That action proposed to require inspections to detect fatigue-related cracking and loose rivets in the subframe yoke assemblies of the quick engine change units (QECU) on both wings; and replacement of rivets, and repair or replacement of yoke assemblies, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposal.

Since the issuance of the proposal, Jetstream Aircraft Limited as issued Service Bulletin ATP–54–11, Revision 1, dated November 9, 1993. This revision is substantially the same as the original version. However, it contains procedures that would allow operators to perform a visual inspection, rather than an eddy current inspection, prior to reassembly of an engine to the QECU subframe, or prior to installation of an already assembled engine and QECU unit on an airplane, if the subframe unit has accumulated less than 500 hours time-in-service since the last eddy current inspection. This new provision is relieving in nature in that operators would not be required to perform an extensive and costly eddy current inspection, if one had been performed only shortly beforehand. The FAA has revised the final rule to include such a provision, and to include reference to the new revision of the service bulletin as an additional source of appropriate service information.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,650, or $165 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

94–07–12 Jetstream Aircraft Limited: Amendment 39–8870. Docket 93–NM–158–AD.

Applicability: All Model ATP airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of engine mount structural integrity, accomplish the following:

(a) Within 750 hours time-in-service after the effective date of this AD, perform a detailed close visual inspection to detect cracking and loose rivets in the subframe yoke assemblies of the quick engine change units (QECU) on the left- and right-hand wings, in accordance with Jetstream (BAe) ATP Service Bulletin ATP–54–11, dated July 13, 1993; or Revision 1, dated November 9, 1993.

(1) If any loose rivet is detected: Prior to further flight, replace the existing rivet with a new or serviceable rivet in accordance with the service bulletin.

(2) If any type "A" cracking (as defined in the service bulletin) is detected having a crack length that is less than or equal to 4 rivet pitches: Repeat the inspection thereafter at intervals not to exceed 250 hours time-in-service.

(3) If any type "A" cracking (as defined in the service bulletin) is detected having a crack length that is greater than 4 rivet pitches, or that is less than or equal to 7 rivet pitches: Repeat the inspection thereafter at intervals not to exceed 35 hours time-in-service.

(4) If any type "A" cracking (as defined in the service bulletin) is detected having a crack length that is greater than 7 rivet pitches: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(5) If any type "B" or "C" cracking (as defined in the service bulletin) is detected: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Except as provided by paragraph (c) of this AD: Prior to each reassembly of the engine to the QECU subframe, and prior to installation of an already assembled engine and QECU subframe unit on an airplane, perform an eddy current inspection to detect cracking of the subframe yoke assembly, in accordance with Jetstream (BAe) ATP Service Bulletin ATP–54–11, dated July 13, 1993; or Revision 1, dated November 9, 1993. Prior to further flight, replace any cracked subframe yoke assembly with a new or serviceable subframe yoke assembly in accordance with the service bulletin.

(c) For QECU subframe units that have accumulated less than 500 hours time-in-service since an eddy current inspection has been conducted in accordance with paragraph (b) of this AD: Prior to reassembly of the engine to the QECU subframe, and prior to installation of an already assembled engine and QECU subframe unit on an

airplane, perform a detailed close visual inspection to detect cracking of the subframe yoke assembly, in accordance with Paragraph 2.A. of the Accomplishment Instructions of Jetstream (BAe) ATP Service Bulletin ATP–54–11, Revision 1, dated November 9, 1993. Prior to further flight, replace any cracked subframe yoke assembly with a new or serviceable subframe yoke assembly in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(f) The inspections and replacements shall be done in accordance with Jetstream (BAe) ATP Service Bulletin ATP–54–11, dated July 13, 1993; or Jetstream (BAe) ATP Service Bulletin ATP–54–11, Revision 1, dated November 9, 1993, which incorporates the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 5	1	November 9, 1993.
2, 4, 6–9	Original	July 13, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 23, 1994.

Issued in Renton, Washington, on March 30, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8055 Filed 4–20–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–154–AD; Amendment 39–8860; AD 94–07–02]

Airworthiness Directives; McDonnell Douglas Model DC–10–30 and -40 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that requires modification of the cavity vent drain tube assembly at the center wing lower auxiliary fuel tank cavity. This amendment is prompted by a report that the cavity vent tube, if not properly grounded, could act as an electrical path in the event of a lightning strike. The actions specified by this AD are intended to prevent arcing in the tank cavity and possible resulting fire.

DATES: Effective May 23, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes was published in the **Federal Register** on November 4, 1993 (58 FR 58807). That action proposed to require modification of the cavity vent drain tube assembly at the center wing lower auxiliary fuel tank.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its member operators, requests that the proposal be withdrawn. The commenter maintains that the proposed modification will allow some fuel leakage within specified limits into the lower auxiliary tank cavity. This commenter asserts that, if this modification is not mandated by the FAA, then fuel will not be permitted to leak into the cavity and, unless fuel/vapor is present, there is no risk of fire in this cavity in the event of a lighting strike. The commenter also points out that a daily check to detect fuel leakage in the cavity drain valve is currently specified in the On Aircraft Maintenance Planning (OAMP) document for Model DC–10 series airplanes. The commenter concludes that, since these inspections are performed on a daily basis, and since fuel will not be permitted to leak into the cavity if the modification is not mandated, then a lightning strike will not pose a threat to an area containing fuel or fuel vapor.

The FAA does not concur that withdrawal of the proposal is appropriate. First, the FAA points out that the OAMP document is not a mandated, FAA-approved document; therefore, regardless of the number or types of inspections that are contained in it, there is no assurance that operators will strictly comply with those inspections or the indicated inspection intervals. Additionally, there is always the potential that a fuel leak could develop during flight between inspection intervals. Second, the FAA has determined that, since the required modification of the cavity vent drain tube assembly will prevent the possibility of a lightning strike traveling up the cavity vent tube, the possibility of arcing in the fuel tank cavity is thereby eliminated (regardless of whether or not fuel/vapor is present). Further, the FAA has determined that long term continued operational safety will be better assured by actual modification of the cavity vent drain tube assembly to remove the source of the problem, rather than by continuous inspections. Long term inspections may not be providing the degree of safety

assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The modification required by this AD is in consonance with these considerations.

The ATA also requests that the proposed compliance time of 12 months for the modification be extended to 18 months. Such an extension would permit accomplishment of the proposed modification during regularly scheduled maintenance visits for most affected operators and would preclude special scheduling at considerable expense. The FAA concurs. Upon consideration of the information provided by the commenter, and the fact that there have been no in-service incidents of arcing or fire in the tank cavity (related to grounding problems in the cavity vent drain tube assembly), the FAA has determined that extending the compliance time by 6 additional months will not adversely affect safety. Such extension will align with operators normal "C" checks, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Paragraph (a) of the final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 294 McDonnell Douglas Model DC–10–30 and -40 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 127 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $120 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,687.50, or $312.50 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

94–07–02 McDonnell Douglas: Amendment 39–8860. Docket 93–NM–154–AD.

Applicability: McDonnell Douglas Model DC–10–30 and –40 series airplanes, and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 28–204, dated August 5, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing in the tank cavity and possible resulting fire, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the cavity vent drain tube assembly at the center wing lower auxiliary fuel tank cavity in accordance with McDonnell Douglas DC–10 Service Bulletin 28–204, dated August 5, 1993.

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

Note: 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) The modification shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 28–204, dated August 5, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3229 E. Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 23, 1994.

Issued in Renton, Washington, on March 18, 1994.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6911 Filed 4–20–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–20–AD; Amendment 39–8874; AD 94–08–03]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires visual inspection to detect

inward buckling of the left and right main landing gear (MLG) pistons, and modification or replacement of the rebound check valves with new valves. If inward buckling is detected, this AD also requires replacement of the MLG piston with a serviceable piston. This amendment is prompted by failures of the MLG piston on Model DC–10 series airplanes. The actions specified by this AD are intended to prevent failure of the MLG piston and the subsequent reduced controllability of the airplane during landing.

DATES: Effective May 23, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on September 29, 1993 (58 FR 50871). That action proposed to require visual inspection to detect inward buckling of the left and right main landing gear (MLG) pistons, and modification or replacement of the rebound check valves with new valves. If inward buckling is detected, that action also proposed to require replacement of the MLG piston with a serviceable piston.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter, the Air Transport Association (ATA) of America, on behalf of one of its member operators, objects to the proposed requirement to modify or replace rebound check valves on the MLG pistons with new valves. This commenter suggests that the requirement is unnecessary, due to the fact that the piston assemblies installed on the Model MD–11 series airplanes are substantially stronger than those installed on the Model DC–10 series airplanes. The FAA does not concur that this rule is unnecessary. Although the pistons installed on Model MD–11 series airplanes are generally stronger than those installed on Model DC–10 series airplanes, the FAA has reviewed an analysis conducted by the manufacturer, which supports the FAA's finding that the thicker piston walls (a few thousandths of an inch) on pistons installed on Model MD–11 series airplanes will not adequately prevent inward buckling of MLG pistons. Model MD–11 series airplanes have a higher maximum landing weight than Model DC–10 series airplanes. Under certain conditions, these higher landing weights result in higher pressure loads in the rebound chamber. Therefore, the FAA has determined that the installation of new or modified rebound check valves will prevent failure of MLG pistons and the subsequent reduced controllability of the airplane during landing.

Several commenters request extensions of the proposed two-year compliance time. One of these commenters requests that the proposed compliance time be extended to eight years, which would allow operators to accomplish the proposed modification or replacement of the rebound check valves coincidentally with the operator's regularly scheduled maintenance ("D" check) at which time the MLG would be scheduled to be changed. Another commenter requests that the compliance time coincide with AD 92–27–18, Amendment 39–8453 (58 FR 5259, January 21, 1993), which is applicable to certain DC–10 series airplanes, to require visual inspection to detect inward buckling of the left and right MLG pistons, and modification or replacement of the rebound check valves with new valves.

The FAA does not concur with these commenters' request to extend the compliance time. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required modification or replacement of the rebound check valves without compromising safety. Additionally, the FAA finds that the integrity of the MLG cannot be ensured for a period of eight years without modifying or replacing the rebound check valves. Further, in light of the reported incident during which the MLG piston on a Model DC–10–10 series airplane failed, and the safety implications of a failed MLG piston and the subsequent reduced controllability of the airplane during landing, the FAA finds that an extension of the compliance time would adversely affect safety of the affected airplanes. Although the MLG's installed on Model DC–10 series airplanes and Model MD–11 series airplanes are similar in basic design, the ultimate strength capability of the MLG's differ significantly. In developing the compliance time of 24 months, the FAA based its finding upon, among other factors, the potential of the affected airplanes to be exposed to conditions that may result in buckling of the MLG pistons. The FAA finds that the higher landing maximum weights of the Model MD–11 series airplanes may result in higher pressure loads in the rebound chamber, which may result in a greater rate of failure on these MLG's. Therefore, the FAA finds the 24-month compliance time justifiable and appropriate to address this unsafe condition.

Several commenters note that the economic impact information in the proposal was inaccurate. One of these commenters states that the FAA's estimate of 9.5 work hours per airplane to accomplish the proposed actions is extremely low. One operator estimates that its cost to implement the actions proposed by this AD will be approximately $65,000. One commenter states that a more accurate estimation would be 30 work hours, as is specified in McDonnell Douglas MD–11 Service Bulletin 32–19, Revision 1, dated August 12, 1993 (referenced in the proposal as the appropriate source of service information). The FAA concurs, in part, with these commenters observations. The approximate number of work hours required to accomplish the required actions, which was presented in the economic impact information of the notice, was provided to the FAA by the manufacturer, and was based on the best data available at that time. The FAA now recognizes that the number used in the proposal did not include the .5 work hour required to inspect the MLG pistons, although it did

include the time required to modify and install the rebound check valves. In light of this, the number of work hours in the economic impact information, below, has been increased to 10 work hours. The cost analysis in AD rulemaking actions typically does not include planning time, aircraft preparation time, time to gain access and remove parts, or time to raise and lower the aircraft; accordingly, the cost estimate, below, does not include this data.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 63 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,251 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,622, or $1,801 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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:

94–08–03 McDonnell Douglas: Amendment 39–8874. Docket 93–NM–20–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Service Bulletin 32–19, Revision 1, dated August 12, 1993, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) piston and the subsequent reduced controllability of the airplane during landing, accomplish the following:

(a) Within 2 years after the effective date of this AD, perform a visual inspection to detect inward buckling of the left and right MLG pistons, in accordance with McDonnell Douglas MD–11 Service Bulletin 32–19, Revision 1, dated August 12, 1993.

(1) If any piston is found to be buckled inwardly, prior to further flight, accomplish the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, in accordance with McDonnell Douglas MD–11 Service Bulletin 32–19, Revision 1, dated August 12, 1993:

(i) Replace that MLG piston with a serviceable piston; and

(ii) Modify or replace the rebound check valves with new valves.

(2) If no piston is found to be buckled inwardly, prior to further flight, modify or replace the rebound check valves with new valves in accordance with McDonnell Douglas MD–11 Service Bulletin 32–19, Revision 1, dated August 12, 1993.

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

Note: 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) The inspection, replacement, and modification shall be done in accordance with McDonnell Douglas MD–11 Service Bulletin 32–19, Revision 1, dated August 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 23, 1994.

Issued in Renton, Washington, on March 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8175 Filed 4–20–94; 8:45 am]

BILLING CODE 4910–13–U

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 200]

Educational, Scientific, and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Notice of final rulemaking.

SUMMARY: By this notice the Agency is adopting final regulations governing its administration of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (Beirut Agreement of 1948). A recent decision by the United States Court of Appeals (9th Circuit) and Congressional enactment of legislation affecting the Agency's implementation

of the Beirut Agreement dictate that new regulations be adopted.

EFFECTIVE DATE: These regulations will take effect upon publication.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: Since its establishment in 1946, the United Nations Educational, Cultural, and Scientific Organization (UNESCO) has endeavored to promote the free flow and exchange of scientific and educational material between nations through the elimination of import and customs duties on such material. The Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character (Third General Session of UNESCO; Beirut, Lebanon; 1948; 17 U.S.T. 1578) hereinafter, the "Agreement," is the first fruit borne of this international collaborative effort. The Agreement provides an exemption of import duties, import licenses, special taxes, quantitative restrictions and other restraints and costs on certain types of audiovisual materials.

Adopted by UNESCO in 1948, the Agreement entered into force and effect August 12, 1954. Although an original signatory to the Agreement, United States ratification was delayed until May 26, 1960. Formal U.S. implementation of the Agreement was, in turn, delayed until passage of Public Law 89–634 on October 8, 1966. Pursuant to Executive Order 11311, responsibility for implementation of the Agreement was delegated to the Agency. Twenty-nine nations are signatory to the Agreement and an additional twenty-eight countries participate under the terms of the Agreement on an informal basis.

The Agency implements and administers the Agreement in the case of exports through the issuance of a Certificate of International Educational Character. Material for which this Certificate has been issued is ordinarily afforded duty-free entry into countries participating in the Agreement. The Agency facilitates the duty-free entry of qualified audio-visual material into the United States through the authentication of a Certificate issued by a foreign government.

Simply put, the Agreement covers educational, scientific, and cultural audio-visual material which is generally used for educational or instructional purposes. Pursuant to Article I of the Agreement, visual and auditory material shall be deemed to be of an educational, scientific, and cultural character: (a) When their primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and

(b) When the materials are representative, authentic, and accurate; and

(c) When the technical quality is such that it does not interfere with the use made of the material.

Under the Agreement, favorable import treatment has *not* been extended to material which has as its primary purpose or effect to amuse or entertain, to inform concerning timely current events, *i.e.*, spot news, to stimulate the use of a special process or product, advertise, or to raise funds. The Agreement specifically provides for the favorable import treatment of (1) Films, filmstrips and microfilm in either negative form, exposed and developed, or positive form, printed and developed; (2) sound recordings of all types and forms; (3) glass slides; models, static and moving; wall charts, maps, and posters. These materials are afforded favorable import treatment only upon a determination made by the government of the country of import that they are educational, scientific, and cultural in character.

A Judicial Challenge

On December 5, 1985, a group of independent filmmakers, producers, distributors, and a membership association filed suit against the Agency in United States District Court for the Central District of California. Plaintiffs alleged that the Agency-promulgated regulations governing administration of the Agreement violated their Constitutional right of free speech. The district court agreed with Plaintiffs and found that the regulations were unconstitutional on their face. See *Bullfrog Films, Inc.* v. *Wick*, 646 F. Supp. 492 (C.D. Cal. 1986). The district court was upheld on appeal. See *Bullfrog Films, Inc.* v. *Wick*, 847 F.2d 502 (9th Cir. 1988).

The Courts determined that the regulations, as promulgated, were unconstitutionally vague and permitted the Agency to engage in impermissible content analysis. In response to the district court decision, Bullfrog I, the Agency published revised regulations on November 16, 1987. See 52 FR 43,753 (1987). Plaintiffs immediately sought district court review and were again successful when the court found, pursuant to unpublished decision filed May 13, 1988, that the revised regulations were facially unconstitutional. On September 9, 1988, the district court ordered the Agency to promulgate new regulations consistent with the Constitution.

The Agency sought appellate review and was granted a stay of the district court's order. During the pendency of this second appeal the Agency continued to administer the Agreement pursuant to the revised regulations published on November 16, 1987. A second appellate decision, Bullfrog II, was rendered March 12, 1992. See *Bullfrog Films, Inc.* v. *Wick*, 959 F.2d 782 (9th Cir. 1992).

In the Bullfrog II decision the circuit court found three of the four grounds upon which the Agency had sought appellate review to be moot due to newly enacted Congressional legislation. This legislation, discussed more fully *infra*, directs the Agency to refrain from the content analysis that the courts had found objectionable. The circuit court remanded a fourth ground of appeal on the basis that the court below had not ruled on the matter. In its opinion, the Bullfrog II court determined that the Agency should be afforded an opportunity to administer the Agreement in light of the new legislation and promulgate revised regulations consistent with both the decisions of the courts and the legislative directives.

A Legislative Initiative

While the issues surrounding Agency administration of the Agreement continued to wend their way through the courts, Congressional interest in this matter was piqued. Pursuant to section 207 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 101–138, 105 Stat. 647 (1991), Congress enacted legislation which addresses Agency administration of the Agreement. In administering the Agreement, the Agency may not consider visual or auditory material to fail to qualify as being of international educational character: (1) Because it advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) because it might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) because it is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) because it does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge; or

(5) because in the opinion of the agency the material is propaganda.

This legislation is intended to cure the Constitutional infirmities under which the previously promulgated regulations allegedly labored. The legislation is intended to also eliminate the vagueness surrounding what material the Agency will certify or authenticate and to limit the permissible scope of content analysis which the Agency may undertake in its determination of whether to certify or authenticate submitted material. The House Conference Report illustrates the legislative intent underlying the passage of this provision. The Conferees state adoption of section 207 is necessary:

* * * to ensure that the United States implements the Beirut Agreement in conformity with its purpose and with the First Amendment to the Constitution of the United States. The provision is intended to ensure that government regulations do not frustrate the purpose of the Agreement by empowering U.S. government officials to make subjective judgments about the political content or message of documentary films, and thereby impede their circulation abroad by denial of educational certification. Adoption of the provision is also designed to ensure that determinations by the U.S. Government of the educational character of documentary films are viewpoint neutral.

H.R. Conf. Rep. No. 238, 102d Cong., 1st Sess. 126 (1991), *reprinted in* 1991 U.S.C.C.A.N. 384, 468.

Executive Response

On August 12, 1993, the Agency published in the **Federal Register**, proposed regulations that it believed sufficient to reconcile the terms of the Agreement with the language of section 207 and the judicial decisions rendered in Bullfrog I and Bullfrog II discussed above. A total of twelve comments were received and reviewed. These comments were generally supportive of the proposed regulations, although three commentors opined that the Agency's proposed regulations failed to implement fully the terms of the Agreement. Other comments suggested that the definition of materials entitled to Agreement certification should be expanded to include learning aids, models, and entertainment films. Those commentors who questioned whether the Agreement was being fully implemented focused their concern upon differences in the language of section 207 and the terms of the Agreement.

Section 207 directs continued Agency implementation and administration of the Agreement. The terms of the Agreement require that the Agency ascertain that material submitted for certification or authentication is of an international educational, scientific, and cultural character. Obviously, some degree of content analysis is required and the courts have recognized this fact. Accordingly, this requirement will be met, pursuant to the adopted definition set forth at § 502.2, through the submission of material which is intended to instruct or inform or through the submission of material whose content is such as to maintain, increase, or diffuse knowledge. Submitted material must also be free of widespread and gross misstatements of fact.

One commentor, Center for Constitutional Rights, suggested that the word "reasoned" be deleted from the definition of "instruct or inform" which is set forth in § 502.2. The Center suggests that inclusion of the word "reasoned" may improperly disqualify some educational material and may invite impermissible viewpoint analysis. Upon review of this matter, the Agency agrees that inclusion of the word "reasoned" in the definition of "instruct or inform" is unnecessary and therefore deletes it from the final definition adopted herein.

The criteria which the Agency will utilize in its certification and authentication review process are set forth at § 502.3. In adopting this criteria the Agency has examined the opinions rendered in *Big Mama Rag, Inc.* v. *United States*, 631 F.2d 1030 (D.C. Cir. 1980), and *National Alliance* v. *United States*, 710 F.2d 868 (D.C. Cir. 1983). The Agency is of the opinion that the adopted regulations will, consistent with the opinion rendered in National Alliance, focus the required analysis upon the method of presentation rather than the content of expression. Material which instructs or informs or maintains, increases, or diffuses knowledge (an Agreement requirement) and is free of widespread and gross misstatements of fact (a section 207 directive) will be certificated or authenticated regardless of viewpoint.

Regulatory Analysis and Notices

In accordance with 5 U.S.C. 605(5), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) or Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. The reporting and regulatory requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 502

Audiovisual material, Education, Exports, Imports, Trade agreements.

Accordingly, 22 CFR part 502 is revised to read as follows:

PART 502—[Revised]

PART 502—WORLD-WIDE FREE FLOW OF AUDIO-VISUAL MATERIALS

Sec.

502.1 Purpose
502.2 Definitions
502.3 Certification and authentication criteria
502.4 Certification procedures—Exports
502.5 Authentication procedures—Imports
502.6 Consultation with subject matter specialists
502.7 Review and appeals procedures
502.8 Coordination with U.S. Customs Service
502.9 General information

Authority: 5 U.S.C. 301; 19 U.S.C. 2051, 2052; 22 U.S.C. 1431 *et seq.*; Public Law 101–138; E.O. 11311, 31 FR 13413, 3 CFR 1966–1900 comp., page 593.

§ 502.1 Purpose.

The United States Information Agency administers the "Beirut Agreement of 1948", a multinational treaty formally known as the Agreement for Facilitating the International Circulation of Visual and Auditory Material of an Educational, Scientific and Cultural Character. This Agreement facilitates the free flow of educational, scientific and cultural audio-visual materials between nations by providing favorable import treatment through the elimination or reduction of import duties, licenses, taxes, or restrictions. The United States and other participating governments facilitate this favorable import treatment through the issuance or authentication of a certificate that the audio-visual material for which favorable treatment is sought conforms with criteria set forth in the Agreement.

§ 502.2 Definitions.

Agency—means the United States Information Agency.

Applicant—means: (1) The United States holder of the "basic rights" in the material submitted for export certification; or (2) the holder of a

foreign certificate seeking import authentication.

Application form—means the Application for Certificate of International Educational Character (Form IAP–17) which is required for requesting Agency certification of United States produced audio-visual materials under the provisions of the Beirut Agreement.

Attestation Officer—means the Chief Attestation Officer of the United States and any member of his or her staff with authority to issue Certificates or Importation Documents.

Audio-visual materials—means: (1) Films, filmstrips and microfilm in exposed and developed negative form, or in positive form, *viz.*, masters or prints, teletranscriptions, kinescopes, videotape; (2) electronic sound recordings and sound/picture recordings of all types and forms or pressings and transfers thereform; (3) slides and transparencies; moving and static models, wallcharts, globes, maps and posters.

Authentication—means the process through which an applicant obtains a United States Importation Document for Audio-visual Materials (Form IA–862).

Basic rights—means the world-wide non-restrictive ownership rights in audio-visual materials from which the assignment of subsidiary rights (such as language versions, television, limited distribution, reproduction, etc.) are derived.

Beirut Agreement—means the "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, or Cultural Character."

Certificate—means a document attesting that the named material complies with the standards set forth in Article I of the Beirut Agreement issued by: (1) The appropriate government agency of the State wherein the material to which the certificate relates originated, or (2) by the United Nations Educational, Scientific or Cultural Organization.

Certification—means the process of obtaining a certificate attesting that audio-visual materials of United States origin being exported from the United States comply with the standards set forth in Article I of the Beirut Agreement, as interpreted pursuant to Section 207 of Public Law 101–138.

Collateral instructional material—means a teacher's manual, study guide, or similar instructional material prepared or reviewed by a bona fide subject matter specialist. Such material must delineate the informational or instructional objectives of the audio-visual material and illustrate or explain how to utilize such material to attain the stated objectives.

Committee on attestation—means the committee which advises the Attestation Officer on matters of policy and the evaluation of specific materials.

Director—means the Director of the United States Information Agency.

Exports—means educational, scientific, and cultural audio-visual material of United States origin, being sent from the United States.

Importation document—means the United States Importation Document for Audio-visual Materials (Form IA–862) issued by the Chief Attestation Officer of the United States which attests that materials of foreign origin entering the United States comply with the standards set forth in Article I of the Beirut Agreement (as interpreted pursuant to section 207 of Public Law 101–138) and is therefore entitled to duty-free entry into the United States pursuant to the provisions of United States Customs Bureau Harmonized Tariff System Item No. 9817.00.4000.

Imports—means educational, scientific, and cultural audio-visual material of foreign origin being brought into the United States.

Instruct or inform—means to teach, train or impart knowledge through the development of a subject or aspect of a subject to aid the viewer or listener in a learning process. The instructional or informational character of audio-visual material may be evidenced by the presence of collateral instructional material.

Knowledge—means a body of facts and principles acquired by instruction, study, research, or experience.

Review Board—means the panel appointed by the Director to review appeals filed by applicants from decisions rendered by an Attestation Officer.

Subject matter specialist—means an individual who has acquired special skill in or knowledge of a particular subject through professional training or practical experience.

§ 502.3 Certification and authentication criteria.

(a) The Agency shall certify or authenticate audio-visual materials submitted for review as educational, scientific and cultural in character and in compliance with the standards set forth in Article I of the Beirut Agreement when: (1) Their primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and

(2) The materials are representative, authentic, and accurate; and

(3) The technical quality is such that it does not interfere with the use made of the material.

(b) The Agency will not certify or authenticate any audio-visual material submitted for review which:

(1) Does not primarily instruct or inform through the development of a subject or aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge.

(2) Contains widespread and gross misstatements of fact.

(3) Is not technically sound.

(4) Has as its primary purpose or effect to amuse or entertain.

(5) Has as its primary purpose or effect to inform concerning timely current events (newsreels, newscasts, or other forms of "spot" news).

(6) Stimulates the use of a special process or product, advertises a particular organization or individual, raises funds, or makes unsubstantiated claims of exclusivity.

(c) In its administration of this section, the Agency shall not fail to qualify audio-visual material because:

(1) It advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) It might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) It is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) It does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or an aspect of a subject and its content is not such as to maintain, increase, or diffuse knowledge; or

(5) In the opinion of the agency the material is propaganda.

§ 502.4 Certification procedures—Exports.

(a) Applicants seeking certification of U.S. produced audio-visual materials shall submit to the Agency a completed Application Form for each subject or series for which certification is sought. Collateral instructional material, if any, and a copy or example of the material must accompany the Application Form.

(b) Upon an affirmative determination by the Agency that the submitted materials satisfy the Certification and

Authentication Criteria set forth in § 502.3 of this part, a Certificate shall be issued. A copy of such Certificate must accompany each export shipment of the certified material.

§ 502.5 Authentication procedures—imports.

(a) Applicants seeking Agency authentication of foreign produced audio-visual materials shall submit to the Agency a *bona fide* foreign certificate, a copy or example of the material for which authentication is sought, and related collateral instructional material, if any.

(b) Upon an affirmative determination by the Agency that the submitted materials satisfy the Certification and Authentication Criteria set forth in § 502.3 of this part, an Importation Document shall be issued. A copy of such Importation Document must be presented to United States Customs at the port of entry.

§ 502.6 Consultation with subject matter specialists.

(a) The Agency may, in its discretion, solicit the opinion of subject matter specialists for the purpose of assisting the Agency in its determination of whether materials for which export certification or import authentication is sought contain widespread and gross misstatements of fact.

(b) As necessary, the Agency may determine eligibility of material for certification or authentication based in part on the opinions obtained from subject matter specialists and the Committee on Attestation.

§ 502.7 Review and appeal procedures.

(a) An applicant may request a formal review of any adverse ruling rendered by the Attestation Officer. Such request for review must be made in writing and received no more than 30 days from the date of the Attestation Officer's decision.

(b) The request for review must set forth all arguments which the applicant wishes to advance in support of his or her position and any data upon which such argument is based. A copy of the material for which certification or authentication has been denied must accompany the request for review. The request for review should be addressed as follows: Attestation Program Review Board (GC/A), U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

(c) The Review Board shall render the applicant a written decision, reversing or affirming the ruling of the Attestation Officer, within 30 days from receipt of the request for review. Such decision shall constitute final administrative action.

§ 502.8 Coordination with United States Customs Service.

(a) Nothing in this part shall preclude examination of imported materials pursuant to the Customs laws and regulations of the United States as codified at 19 U.S.C. 1305 and 19 CFR 10.121, or the application of the laws and regulations governing the importation or prohibition against importation of certain materials including seditious or salacious materials as set forth at 19 U.S.C. 1305.

(b) Agency authentications of a foreign certificate for entry under HTS Item No. 9817.00.4000 will be reflected by the issuance of an Importation Document. A copy of each Importation Document issued by the Agency will be simultaneously furnished the United States Customs Service.

(c) Customs User Fee: Articles delivered by mail, which are eligible for duty-free entry under the regulations in this part are, additionally, not subjected to the standard Customs User Fee normally imposed by the United States Customs Service, provided there has been a timely filing with the appropriate United States Customs Service office of the documentation required by the regulations in this part.

§ 502.9 General information.

General information and application forms may be obtained by writing to the Attestation Office as follows: Chief Attestation Officer of the United States (GC/A), United States Information Agency, 301 4th Street, SW., Washington, DC 20547; or calling (202) 475–0221.

Dated: April 15, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–9668 Filed 4–20–94; 8:45 am]

BILLING CODE 8230–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Air Docket No. A–90–42; FRL–4876–2]

Designations of Areas for Air Quality Planning Purposes; Amendments and Corrections

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is reaffirming its January 15, 1992 decision to exclude Northern Orange County from the New York-New Jersey-Long Island Consolidated Metropolitan Statistical Area (NYCMSA) ozone nonattainment area in the State of New York. However, EPA has determined that Northern Orange County should be linked with Poughkeepsie ozone nonattainment area. This action is based on information that was brought to EPA's attention by comments on EPA's rulemaking actions which established the current designations and classifications of these areas. EPA is also reaffirming its decision to exclude Putnam County from the NYCMSA ozone nonattainment area and include Putnam County in the Poughkeepsie ozone nonattainment area in the State of New York. This rule completes a process begun on December 28, 1990 to determine the appropriate boundaries of the NYCMSA ozone nonattainment area.

EFFECTIVE DATE: This final rule is effective on April 21, 1994.

ADDRESSES: Materials relevant to this rulemaking are included in Air Docket A–90–42, located in Rm. M–1500, First Floor, Waterside Mall, 401 M Street SW., Washington, DC, and may be inspected at this location during the hours from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m., Monday through Friday, except for legal holidays. A duplicate copy of the docket is located in the EPA Regional Office listed below.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: In the **Federal Register** (FR) of November 6, 1991 (56 FR 56694), EPA issued a final rule promulgating or announcing the designations, boundaries, and classifications of virtually all ozone and carbon monoxide nonattainment areas (including the NYCMSA and the Poughkeepsie ozone nonattainment areas), all particulate matter (PM_{10}) nonattainment areas, and some lead nonattainment areas. Under the authority of sections 107 (d)(2)(B) and (d)(5), 172(a)(1)(B), and 181(a)(3), 186(a)(2), and 188(a) of the amended Clean Air Act (the Act), EPA was not required to solicit public comment prior to these promulgations and, in view of the tight time frames imposed under the Act for designations, classifications, and State Implementation Plan (SIP) submittals, EPA determined that a formal public comment period prior to the promulgations would not be appropriate. Therefore, in its November

6, 1991 notice, EPA stated it would entertain only those public comments addressing the technical correctness of its determinations and significant new policy issues.

In the November 6, 1991 notice, EPA determined that the entire NYCMSA should be designated as nonattainment for ozone, with a classification of severe-17, except in regards to the designation of Orange and Putnam Counties. EPA deferred making a determination at that time for Orange and Putnam Counties, pending a request from the State of New York to conduct a study of the boundaries of the nonattainment area. EPA also determined in its November 6, 1991 notice that the Poughkeepsie ozone nonattainment area, made up of Dutchess County, should be designated marginal nonattainment for ozone.

In the **Federal Register** of November 30, 1992 (57 FR 56762), EPA issued a final rule containing amendments in response to comments received on its November 6, 1991 notice. Among other things, in the November 30, 1992 notice, EPA determined that:

(1) The existing severe-17 classification of the NYCMSA area shall remain unchanged and would include in Orange County, New York the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury;

(2) The remaining towns in Orange County would be excluded from the NYCMSA and designated attainment, specifically the Towns of Cornwall, Crawford, Deerpark, Goshen, Greenville, Hamptonburgh, Middletown, Minisink, Montgomery, Mount Hope, Newburgh, New Windsor, Port Jervis, Wallkill, Wawayanda and the City of Newburgh; and,

(3) Putnam County, New York will be grouped together with Dutchess County, New York and be part of the Poughkeepsie ozone nonattainment area, and be designated as marginal.

For the reasons discussed in its November 30, 1992 notice, EPA solicited comments on the technical correctness of its determination to exclude the northern portion of Orange County and Putnam County from the NYCMSA. EPA stated it would continue to coordinate its analysis of previous comments and any new comments with the State of New York. In addition, EPA stated that, following the comment period on its November 30, 1992 rule, it would come to closure on the boundaries issue in consultation with the State of New York, and would provide the appropriate notification of its decision.

This **Federal Register** provides such notification that EPA has come to closure on the boundaries issue for the NYCMSA. By this rule, EPA is reaffirming its decision to exclude Putnam and Northern Orange Counties from the NYCMSA ozone nonattainment area, but rather than designating Northern Orange County as attainment, EPA is joining it with the Poughkeepsie ozone nonattainment area.

Before and after publication of its November 30, 1992 notice, EPA received comments from four separate commenters. Further, on January 29, 1993, one of the commenters, Scenic Hudson, Inc., along with the Environmental Defense Fund, Inc., filed in the United States Court of the Appeals for the Second Circuit a petition to review the decision to exclude Northern Orange and Putnam Counties from the NYCMSA. On February 18, 1994, and April 8, 1994, EPA agreed to reconsider this decision. This **Federal Register** notice is intended to meet this commitment. The comments considered by EPA and the reasons for its decisions are explained in the remainder of this notice. Additional information can be found in the technical support document developed for this action and available at the addresses mentioned in the beginning of this notice.

Framework of the Clean Air Act

Clauses (i) and (ii) of section 107(d)(4)(A) set out the general process by which ozone areas were to be designated immediately after enactment of the Clean Air Act Amendments of 1990. Within specified time periods, the Governor of each State was to submit a list of areas within the State, designating each area as attainment, nonattainment, or unclassifiable. EPA was to promulgate this list, making any appropriate modifications. In accordance with the definition of a "nonattainment" under section 107(d)(1)(A)(i), an area was to be designated nonattainment if it "does not meet (or * * * contributes to ambient air quality in a nearby area that does not meet) [the ozone ambient air quality standards]".

Clauses (iv) and (v) of section 107(d)(4)(A) incorporated into this general process for designating areas a special process for determining the boundaries of ozone nonattainment areas classified as serious or higher. Under this process, the boundaries of a nonattainment area classified as serious or higher that lay within a Metropolitan Statistical Area ("MSA") or Consolidated MSA ("CMSA") were, by operation of law, expanded to include the entire CMSA, except that the Governor was authorized to recommend excluding portions of the CMSA from the nonattainment area if the Governor concluded, and EPA concurred, that sources in that portion "do not contribute significantly to violation of the national ambient air quality standard". The Governor and EPA were required, under this provision, to "consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport."

If the State and EPA agreed that a portion of the CMSA should be excluded from the serious or higher nonattainment area, the State and/or EPA remained free to designate the portion as appropriate under the general process specified in clauses (i) and (ii) of section 107(d)(4)(A).

Comments on the Designation of Northern Orange County

All of the commenters objected to the exclusion of Northern Orange County from the NYCMSA. Three of the four commenters submitted comments of a general nature and did not provide any technical information for EPA to use in reconsidering its decision. However, one commenter provided information on population, industrial and commercial growth, commuting patterns and population density. This information supplemented and, in some cases, contradicted information submitted by the State of New York as part of its January 15, 1992 study of the NYCMSA boundaries.

In a March 16, 1993 letter EPA recommended that the State consider this information and supplement its January 15, 1992 study. In response to the EPA's request, the State of New York undertook an evaluation of air quality in the Orange and Putnam Counties area using a photochemical grid model, the Urban Airshed Model. This analysis was completed and submitted to EPA on June 16, 1993 and supplemented on April 4, 1994 in response to a request from EPA for clarification.

On February 7, 1994, EPA received additional information and comments from the New York State Department of Transportation (NYSDOT). The report sent by the NYSDOT included information on population, population density, commercial and industrial development, employment, commuting patterns, congestion, and emissions transport. Overall, the information did not affect the findings of the Urban Airshed Modeling analysis, but supported the State's claim that Northern Orange and Putnam Counties

did not contribute significantly to a nonattainment problem in the NYCMSA, and were more like Dutchess County in the Poughkeepsie MSA than the NYCMSA.

Based on EPA's evaluation of the information provided by the commenters and the State, EPA has determined that the State has demonstrated, for the purposes of section 107(d)(4)(A)(iv)–(v) of the Act, that sources in Orange County do not contribute significantly to a violation of the national ambient air quality standard for ozone in the NYCMSA. Air quality modeling performed by New York State predicts that emissions from Northern Orange County have the potential to (i) expand by relatively small amounts the predicted nonattainment area and (ii) increase by relatively small amounts the ozone concentrations in several areas downwind, including Putnam County, Fairfield County (part of the NYCMSA), Dutchess County, and the Hartford, CT nonattainment area.

However, the model employed by New York State—although very useful—has several limitations. Most importantly, its input for the emissions inventory has become outdated, and it models only one ozone nonattainment episode. Modeling more episodes may yield somewhat different results that would generate more confidence in the model's accuracy.

EPA has concluded that the model is directionally sound in that it implicates Northern Orange County's emissions as contributing to nonattainment in several areas downwind. However, the limitations of the model, coupled with the fact that it predicts less-than-overwhelming impacts of Northern Orange County emissions on areas within the NYCMSA, means that EPA cannot conclude that the model implicates Northern Orange County's emissions as significantly contributing to nonattainment air quality within the NYCMSA, within the meaning of clause (v) of section 107(d)(4)(A).

Moreover, other information points strongly to the conclusion that sources in Northern Orange County do not significantly contribute to the nonattainment problems of the NYCMSA. It should be noted that a sophisticated air quality model of the type employed by New York State generally yields the clearest view of one area's contribution to the air quality of a second area. This is because the stationary, area, and mobile source emissions within the first area are directly accounted for and modeled to yield an estimate of their impact on the second area. However, in this case, the results of the model, and its limitations, mean that additional information must be closely considered.

An important additional means for sources in one area to contribute to the nonattainment problem of a second area is through vehicle commuting. As discussed more fully in the accompanying technical support document, the amount of commuting from Orange County into the NYCMSA is relatively small. This factor indicates that Northern Orange County does not significantly contribute to the NYCMSA.

Other factors considered include population, populations density, commercial and industrial development, growth rates, and traffic congestion. As discussed more fully in the technical support document, these factors point towards the conclusion that Northern Orange County is more similar to Dutchess County than to nearby counties in the NYCMSA. The growth rate in Northern Orange County is high, but this factor indicates more that Northern Orange County should be designated nonattainment than it does that this portion of the County must be linked with the NYCSMA.

For these reasons, EPA reiterates its concurrence in New York's finding that Northern Orange County should be excluded from the NYCMSA.

However, by this action, EPA is correcting its previous determination that Northern Orange County should be designated attainment. Instead, EPA is taking action to designate Northern Orange County nonattainment, and include it within the boundaries of the Poughkeepsie nonattainment area. As noted above, the model shows that Northern Orange contributes to nonattainment in Poughkeepsie as well as other areas, and thus meets one prong of the definition of a nonattainment area in section 107(d)(1)(A)(i), which is that the area "contribute[] to ambient air quality in a nearby area that does not meet" ambient air quality standards. As discussed in more detail in the TSD, Northern Orange County resembles in important respects—including population and population density—Dutchess County in the Poughkeepsie area.

Comments on the Designation of Putnam County

Four commenters generally disagreed with EPA's decision in its November 30, 1992 rule to exclude Putnam County. Because of the general nature of the comments, no new information of a technical nature was provided that convinces EPA to reconsider its decision. As described in more detail in the technical support document, the reasons for excluding Putnam from the NYCMSA mirror those for excluding Northern Orange County, except that for Putnam, all the factors involved—including modelled impact on the NYCMSA, amount of emissions, commuting, population density, total population, industrial and commercial development, and growth—make for an even more compelling case that Putnam does not contribute significantly to the NYCMSA.

In addition, EPA is reaffirming its decision to include Putnam in the Poughkeepsie nonattainment area. The reasons for this action again mirror the reasons described above for including Northern Orange County with the Poughkeepsie area. As described in more detail in the accompanying technical support document, air quality modeling performed by the State of New York indicated that Putnam's emissions contributed to nonattainment problems in several areas, including the NYCMSA. Because of the limits of the model, coupled with the less-than-overwhelming impact shown on the NYCMSA, EPA cannot conclude that the model in-and-of-itself implicates Putnam County's emissions as a significant contributor to nonattainment in the NYCSMA. However, the model does implicate Putnam as a contributor—with the highest level of contribution to Dutchess County—sufficient to designate Putnam as nonattainment.

One commenter disagreed with EPA's interpretation of the Act. Scenic Hudson, Inc., claimed that the Act does not allow EPA to move Putnam County into the Poughkeepsie nonattainment area. However, the Act in section 107 (d)(4)(A)(v) does not limit EPA's authority under section 107(d)(4)(A) (i)–(ii) to designate areas that have been excluded.

Future Bump-Up

In addition, EPA intends to promulgate in the near future a notice in accord with section 181(b)(2) of the Act, which requires EPA to "bump up" the classification to moderate of any marginal nonattainment areas that did not attain the standard by November 15, 1993. Air monitoring in Dutchess County has recorded four exceedances of the ozone standard over the past three years (two in each of 1991 and 1993). Thus it appears that the Poughkeepsie area did not attain the ozone standard by November 15, 1993. EPA's action would include Dutchess, Putnam and Northern Orange Counties of the Poughkeepsie nonattainment area.

Error Correction

Based on the information described above, with this rule EPA is making corrections to the designations, boundaries, and classifications that were promulgated or announced in the November 6, 1991 rule and the November 30, 1992 amended rule for the NYCMSA and Poughkeepsie nonattainment areas. Specifically, EPA is revising the designation of the Towns of Cornwall, Crawford, Deerpark, Goshen, Greenville, Hamptonburgh, Middletown, Minisink, Montgomery, Mount Hope, Newburgh, New Windsor, Port Jervis, Wallkill, Wawayanda and the City of Newburgh in Northern Orange County from attainment to nonattainment as part of the Poughkeepsie ozone nonattainment area. These corrections are made under section 110(k)(6) of the Act which provides as follows:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

The EPA interprets this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to EPA's satisfaction that (1) EPA clearly erred in failing to consider or inappropriately considered information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate; and (2) other information persuasively supports a change in the regulation. 57 FR 56763 (col. 1) (November 30, 1992).

In this case, EPA has found that the information provided by the State of New York can justify the exclusion of Northern Orange and Putnam Counties from the NYCMSA and include them as part of the Poughkeepsie nonattainment area.

Summary

With this rule, the EPA is (1) reaffirming its January 15, 1992 decision to exclude Northern Orange and Putnam Counties from the NYCMSA (2) reaffirming its decision to make Putnam County part of the Poughkeepsie ozone nonattainment area; and (3) correcting its decision to designate Northern Orange County as attainment and, instead including it in the Poughkeepsie ozone nonattainment area. This rule completes a process begun on December 28, 1990 to revise the boundaries of the NYCMSA.

The effective designation and classification dates for the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury in Southern Orange County, NY, and for Putnam County, NY, remains as January 15, 1992.

The effective designation and classification dates for Northern Orange County, generally in accordance with the effective date provisions found in the November 30, 1992 corrections rule, 57 FR 56766 (col. 2), are as follows: November 15, 1990 for purposes of determining the scope of a "covered area" under section 211 (k)(10)(D) and opt-in under section 211 (k)(6); as well as determining the baseline for the reductions needed to meet the requirement to reduce volatile organic compounds by 15 percent, under section 182 (b)(1); and April 21, 1994, for all other purposes, including the applicability of new source review provisions and other substantive State or Federal pollution control requirements.

It should be noted that the entire State of New York is part of the Northeast Ozone Transport Region, and all areas of the State are subject to certain control requirements regardless of their attainment status.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 13, 1994.

Carol Browner,

Administrator, Environmental Protection Agency.

PART 81—[AMENDED]

40 CFR Part 81 is amended as follows:

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.300 is amended by revising paragraph (d) (2)(iii) to read as follows:

§ 81.300 Scope.

* * * * *

(d) * * *

(2) * * *

(iii) Determining the scope of a "covered area" under section 211 (k)(10)(D) and opt-in under section 211 (k)(6) for the reformulated gasoline requirement and for purposes of determining the baseline of the reductions needed to meet the requirement to reduce volatile organic compounds by 15 percent under section 181 (b)(1). For all other purposes the effective designation date is January 6, 1992 (except for the Towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury in Orange County, NY, and for Putnam County, NY, for which the effective date is January 15, 1992, and for the remainder of Orange County, NY, for which the effective date is April 21, 1994.

* * * * *

§ 81.333 [Amended]

3. In § 81.333 the table for "New York-Ozone" is amended under the heading "New York-Northern New Jersey-Long Island Area" by revising the entry for "Orange County (part)", the entry for "Poughkeepsie Area" and the entry for "Putnam County"; by revising the entire entry for the "AQCR 161 Hudson Valley Intrastate (Remainder of)"; and by revising footnote number two and by removing footnote number three to the table to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK-OZONE

Designated Area	Designation		Classification	
	Date[1]	Type	Date[2]	Type
* *	*	*	*	*
New York-Northern New Jersey-Long Island Area				

NEW YORK-OZONE—Continued

Designated Area	Designation		Classification	
	Date[1]	Type	Date[2]	Type
* *	*	* *	*	*
Orange County (part) Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury.	1/15/92	Nonattainment	1/15/92	Severe-17.
* *	*	* *	*	*
Poughkeepsie area:				
Dutchess County	1/6/92	Nonattainment	1/6/92	Marginal.
Orange County (remainder)	[Insert date of this rule[2]]	Nonattainment	[Insert date of this rule[2]]	Marginal.
Putnam County	1/15/92	Nonattainment	1/15/92	Marginal.
* *	*	* *	*	*
AQCR 161 Hudson Valley Intrastate (Remainder of). Columbia County Fulton County Schoharie County Ulster County		Unclassifiable/Attainment..		
* *	*	* *	*	*

[1] This date is November 15, 1990, unless otherwise noted.
[2] However, the effective date is November 15, 1990 for purposes of determining the scope of a "covered area" under section 211 (k)(10)(D), opt-in under section 211 (k)(6), and the baseline determination of the 15 % reduction in volatile organic compounds under section 182 (b)(1).

* * * * *

[FR Doc. 94–9662 Filed 4–20–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[PP 8F3674/R2054; FRL–4773–5]

Pesticide Tolerances for 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes interim tolerances (with an expiration date of December 31, 1998) for the fungicide 1-[[2- (2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the raw agricultural commodities corn forage at 12.0 parts per million (ppm), corn fodder at 12.0 ppm, corn grain at 0.1 ppm, sweet corn (kernels plus cobs with husks removed) at 0.1 ppm, pineapples at 0.1 ppm, pineapple fodder at 0.1 ppm. This rule to establish the maximum permissible levels for residues of propiconazole in or on the commodities listed above was requested in petitions submitted by the Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective April 11, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 8F3674/R2054], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

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 issued a notice, published in the **Federal Register** of October 12, 1988 (53 FR 39783), which announced that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 8F3674) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), propose to amend 40 CFR 180.434 by establishing tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the commodities celery at 5.0 ppm, corn forage at 10.0 ppm, corn fodder at 10.0 ppm, corn grain at 0.1 ppm, sweet corn (kernels plus cobs with husks removed) at 0.1 ppm, pineapples at 0.1 ppm, pineapple fodder at 0.1 ppm, legume vegetables (succulent or dried) at 0.5 ppm and legume vegetables foliage at 5.0 ppm. There were no adverse comments received by the Agency in response to the notice of filing. Subsequently, Ciba-Geigy Corporation petitioned the Agency to amend the proposed tolerances by increasing the tolerances from 10.0 to 12.0 ppm for propiconazole residues in or on each of the two commodities, corn forage and corn fodder. Also, at the request of Ciba-Geigy, celery was separated out and regulated under its own petition, and legumes were withdrawn altogether. The tolerance increases and the commodity deletions were announced in the **Federal Register** of July 7, 1993 (58 FR 36409). That notice also repeated Ciba-Geigy Corporation's request that tolerances be established on corn grain, sweet corn, pineapples, and pineapple fodder. There were no adverse comments received by the Agency in response to the amended notice of filing. Prior to the above notice, in the **Federal Register** of June 24, 1987 (52 FR 23654), EPA established tolerances for residues of the subject fungicide on various commodities that included residue levels in the kidney and liver of cattle, goats, hogs, and horses at 0.2 ppm. Subsequently, on July 8, 1987, a final rule correction was published in the **Federal Register** (52 FR 25602) to add tolerances of 0.2 ppm for residues in the kidney and liver of poultry and sheep that were inadvertently dropped from the codified text of the document when the Agency transmitted it for publication.

In a **Federal Register** dated June 21, 1989 (54 FR 26044), EPA announced that tolerances for residues of propiconazole were established for

certain raw agricultural commodities including the kidney and liver of cattle, goats, hogs, horses, and sheep at 2.0 ppm, an increase from the previous residue levels of 0.2 ppm. This was an interim (2 year) tolerance for these commodities with an expiration date of June 21, 1991. On July 1, 1991, EPA announced in the **Federal Register** (56 FR 29900) the extension of the 2.0 ppm tolerance for propiconazole in the kidney and liver of cattle, goats, hogs, horses and sheep until June 21, 1993. Another extension, to January 31, 1994, was announced in the **Federal Register** of August 11, 1993 (58 FR 42672). Permanent tolerances for these commodities were announced in the **Federal Register** on February 18, 1994 (59 FR 8135).

Available data are insufficient to adequately assess the storage stability of propiconazole in corn processed products, and information concerning storage conditions in the poultry metabolism study is lacking. The interim tolerances were established based upon the condition that data be submitted to the Agency to fully support permanent tolerances for these commodities.

Once review of all required residue data is completed, the Agency will reach a regulatory position on the appropriateness of permanent tolerances for this chemical in or on these commodities. If EPA decides permanent tolerances are appropriate, EPA will issue permanent tolerances in response to the petition. These tolerances will be in the form of a final rule and subject to the objections and hearing procedures under the Federal Food, Drug, and Cosmetic Act (FFDCA).

The data submitted in the petition and other relevant materials have been evaluated. The data considered include the following:

1. Plant and animal metabolism studies.
2. Residue data for crop and livestock commodities.
3. Two enforcement methodologies and multi-residue method testing data.
4. A rat oral lethal dose (LD50) of 1,517 milligrams/kilogram (mg/kg) of body weight.
5. A 90–day rat feeding study with a no-observable-effect level (NOEL) of 12 mg/kg/day.
6. A 90–day dog feeding study with a NOEL of 1.25 mg/kg/day.
7. A rabbit developmental toxicity study with a maternal NOEL of 100 mg/kg/day and a developmental toxicity NOEL of greater than 400 mg/kg/day (highest dose tested (HDT)).
8. A rat teratology study with a maternal toxicity NOEL of 30 mg/kg/day and a developmental toxicity NOEL of 30 mg/kg/day.
9. A two-generation rat reproduction study with a reproductive NOEL of 125 mg/kg/day (HDT) and a developmental toxicity NOEL of 25 mg/kg/day.
10. A 1–year dog feeding study with a NOEL of 1.25 mg/kg/day.
11. A 2–year rat chronic feeding/carcinogenicity study with a NOEL of 5 mg/kg/day with no carcinogenic potential under the conditions of the study up to and including approximately 125 mg/kg, the highest dose tested.
12. A 2–year mouse chronic feeding/carcinogenicity study with a NOEL of 15 mg/kg/day and with a statistically significant increase in combined adenomas and carcinomas of the liver in male mice at approximately 375 mg/kg/day, the highest dose tested.
13. Ames test with and without activation, negative.
14. A mouse dominant-lethal assay, negative.
15. Chinese hamster nucleus anomaly, negative.
16. Cell transformation assay, negative.

Ciba-Geigy submitted information which resolved the previously outstanding concerns about the nature of the residue in ruminants, an explanation of recovery calculations, and an explanation of the crop field trial protocol. Data gaps exist concerning dosing in the mouse carcinogenicity study. These data requirements were required under reregistration, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq.

As part of EPA's evaluation of potential human health risks propiconazole has been the subject of five Peer Reviews and one Scientific Advisory Panel (SAP) meeting.

Propiconazole was originally evaluated by the Peer Review Committee on January 15, 1987 and classified as a Group C (possible human) carcinogen with a recommendation made for the quantification of estimated potential human risk using a linearized low-dose extrapolation. The method resulted in the establishment of a Q* of 7.9×10^{-2} $(mg/kg/day)^{-1}$.

The Peer Review Committee's decision was presented to the FIFRA Scientific Advisory Panel on March 2, 1988. The Panel did not concur with the committee's overall assessment of the weight-of-evidence on the carcinogenicity of propiconazole. The Panel recommended placing the chemical in Group D, indicating that the Group C classification was based on minimal evidence. The Panel's determination that EPA's Group C classification was based on minimal evidence was due to the fact that the incidence of liver tumors in male mice only occurred when the mice were given an excessive chemical dose.

In the second, third, and fourth Peer Reviews that followed, the Peer Review Committee considered recommendations of the SAP as well as rebuttals by the registrant. Its conclusion, however, that propiconazole should be classified as a Group C carcinogen with a quantification of potential human risk remained unchanged.

As part of a fifth Peer Review, EPA considered additional information provided by the registrant in support of the registrant's argument that the high dose was excessively toxic in the mouse carcinogenicity study. It further argued that the data from the high dose (2,500 ppm) should not be included in the evaluation of carcinogenic potential of propiconazole. In support of these arguments, the registrant provided two subchronic oral toxicity studies in mice. Ciba-Geigy also provided a reread of the pathology slides from a mouse oncogenicity study which it felt indicated sufficient concurrent liver toxicity at 2,500 ppm to document that this dose was excessive. These findings were not present in the original pathology report. Owing to the inconsistency in Ciba-Geigy's report and the original report, the Agency requested that an independent (third) evaluation of the pathology slides be made to determine if the pathology reported could be confirmed. The results of this (third) pathology evaluation were used in the fifth Peer Review in place of data resulting from the earlier evaluations provided by Ciba-Geigy.

The Peer Review Committee considered the following facts regarding the toxicology data on propiconazole in a weight-of-evidence determination of carcinogenic potential:

1. Increased numbers of adenomas (increased trend and pairwise comparison) were found in the livers of male CD1 mice given 2,500 ppm of propiconazole in the diet.
2. The treated animals had earlier fatalities than the controls.
3. The numbers of carcinomas were increased (trend only) in male mice only at the 2,500 ppm dose level. Tumors were not significantly increased at the 500 ppm dose level. Adenomas observed in the treated animals were larger and more numerous than those in controls; however, the tumor type (adenoma) was the same.

4. No excessive number of tumors was found in female mice.

5. In a rat study conducted with acceptable doses of propiconazole, no excessive numbers of tumors were found.

The Peer Review Committee determined, based on the additional information submitted by Ciba-Geigy from two 90–day subchronic studies in mice that the 2,500–ppm dose used in the 2–year chronic study exceeded the maximum tolerated dose (MTD) based on the endpoint of hepatic necrosis, and the 500–ppm dose used in the chronic study was inadequate to assess the carcinogenicity of propiconazole. Based on the third pathology evaluation of the chronic study, the Peer Review Committee disagreed with Ciba-Geigy's argument that the study showed excessive toxicity at the 2,500 ppm-dose. However, the Peer Review Committee concluded that the 90–day subchronic studies are a better measure of what would be an MTD.

Based upon these findings, the Peer Review Committee agreed that the classification for propiconazole should remain a Group C (possible human) carcinogen and recommended against the previously used Q* (viz. 0.079) for risk assessment purposes. For the purpose of risk characterization the Peer Review Committee recommended that the reference dose (RfD) approach should be used for quantification of human risk. This decision was based on the disqualification of the high dose (2,500 ppm), making the data inappropriate for the calculation of Q*. Because the middle dose (500 ppm) was not considered sufficiently high enough for assessing the carcinogenetic potential of propiconazole, EPA has requested an additional mouse study at intermediate dose levels in male mice only. EPA does not expect that these data will significantly change the above cancer assessment that propiconazole poses a negligible cancer risk to humans.

The reference dose (RfD) for propiconazole is 0.013 mg/kg/day, based on a no-observable-effect level (NOEL) of 1.25 mg/kg/day and an uncertainty factor of 100. The NOEL is taken from a 1–year feeding study in dogs which demonstrated as an effect irritation of the stomach in males.

The Agency has evaluated dietary exposure to the fungicide residues based on the proposed tolerances and the commodities which have established tolerances using data on anticipated residues and percent crop treated data. The livestock burden was calculated using anticipated residues in feed items multiplied by the expected percent contribution to the diet. This dietary burden was then compared with available data from feeding studies to determine anticipated residues in meat and milk. Based on current registered uses of this chemical, only 3 percent of the RfD is being utilized for the general U.S. population. The tolerances are expected to elicit only a minor increase in the percent utilization of the RfD for the general U.S. population. The most highly exposed subgroups, nursing and nonnursing infants <1 year, have Anticipated Residue Contributions (ARCs) from all published tolerances of 1.87×10^{-3} and 3.64×10^{-3} mg/kg bwt/day. These ARCs represent 14% and 28% of the Reference Dose for these subgroups, respectively. The proposed tolerances will add 0.4% and 1.4% of the RfD for nursing and nonnursing infants <1 year, respectively.

The nature of the residue in plants and animals is adequately understood, and adequate analytical methods (gas chromatography) are available for enforcement purposes. Because of the long lead time for establishing these tolerances and food additive regulations to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128C, CM #2, 1921 Jefferson Davis Highway., Arlington, VA 22202 (703) 305–5232.

The pesticide is considered useful for the purpose for which the tolerances are being sought. For the reasons described above, the Agency is establishing interim tolerances for residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the following raw agricultural commodities: corn forage, 12 ppm; corn fodder, 12 ppm; corn grain, 0.1 ppm; sweet corn (kernels plus cobs with husks removed), 0.1 ppm; pineapple, 0.1 ppm; and pineapple fodder, 0.1 ppm. Because of inadequate storage information for the poultry metabolism study, and lack of storage stability data for propiconazole in corn processed products, the Agency cannot make a decision on permanent tolerances for these commodities at this time. However, based on available data the Agency concludes that the established interim tolerances will not be injurious to public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). 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 178.127). 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).

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 food additive regulations or raising tolerance levels or food additive regulations 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 (40 FR 24950).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant regulatory action" as 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 (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. The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 11, 1994.

Douglas D. Campt,

Director, Office of Pesticide Progrms.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In §180.434, by adding a new paragraph (c) to read as follows:

§180.434 1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

(c) Tolerances limited by an expiration date are established for residues of 1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration Date
Corn, fodder	12	12/31/98
Corn, forage	12	12/31/98
Corn, grain	0.1	12/31/98
Corn, sweet (kernels, plus cobs with husks removed)	0.1	12/31/98
Pineapple	0.1	12/31/98
Pineapple, fodder	0.1	12/31/98

[FR Doc. 94–9297 Filed 4–20–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 93–85; FCC 94–76]

Amendment of Part 97 of the Commission's Rules Concerning Message Forwarding Systems in the Amateur Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules for the amateur service to enable contemporary message forwarding systems to operate at high speed while retaining the absolute minimum safeguards to prevent misuse. This amendment was necessary to resolve six petitions that asked for amendment of § 97.103(a) of the Commission's Rules. To comply with the former rule, the control operator of every forwarding station was required to review each message for improper content prior to its retransmission. The Commission found this message content review was unnecessary and resulted in system delays. The intended effect of the final rule is to relieve control operators of intermediate forwarding stations, other than the first forwarding station, from accountability when their stations retransmit improper communications inadvertently.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted March 30, 1994, and released April 13, 1994. The complete text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239) 1919 M Street, NW., Washington, DC. The complete text of this action, including the rule amendments, may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Report and Order

1. The rules for the amateur service have been amended to accommodate the thousands of amateur operators who voluntarily link their individually-licensed very high frequency (VHF) stations together to form easily-accessible *ad hoc* message forwarding systems. Currently, the control operator of each station is held individually accountable for each message the station retransmits, thereby resulting in repetitive message content review and in system delays. This amendment will relieve the control operators of all but the originating and first forwarding station of the need to review the content of every message.

2. The amateur service community stated that it generally desired relaxation of the present rules that apply to control operator responsibility to accommodate amateur stations operated in contemporary high speed message forwarding systems. We are amending the rules, therefore, to hold accountable only the licensee of the station originating a message and the license of the first station forwarding a message in a high speed message forwarding system. To comply with the revised rules, the licensee of the first forwarding station must either authenticate the identity of the station from which it accepts communications on behalf of the system, or accept accountability for the content of the message. The Commission specifically noted that there is no central supervisory authority in an *ad hoc* amateur service digital network, and that the vulnerability of an unsupervised system can make it an easy target for misuse by uncooperative operators and non-licensees. The Commission also observed that it can be difficult to establish after the fact that a particular VHF station originated a fleeting high speed digital transmission. For these reasons, it concluded there must be on-going oversight of these systems. It also found the control operators of the first forwarding stations are in the best position to provide such oversight because their stations accept, on behalf of the system, messages from originating stations.

3. The rules are set forth at the end of this document.

4. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

5. This Report and Order is issued under the authority of sections 301, 303(l)(1) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 301, 303(l)(1) and (r).

List of Subjects in 47 CFR Part 97

Communications equipment, Radio, Reporting and recording requirements.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

Part 97—Amateur Radio Service

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609, unless otherwise noted.

2. Section 97.3 is amended by redesignating paragraphs (a)(28) through (a)(44) as paragraphs (a)(29) through (a)(45), respectively, adding a new paragraph (a)(28), and revising paragraph (a)(7) and redesignated paragraph (a)(36) to read as follows:

§ 97.3 Definitions.

(a) * * *

(7) *Auxiliary station.* An amateur station, other than in a message forwarding system, that is transmitting communications point-to-point within a system of cooperating amateur stations.

* * * * *

(28) *Message forwarding system.* A group of amateur stations participating in a voluntary, cooperative, interactive arrangement where communications are sent from the control operator of an originating station to the control operator of one or more destination stations by one or more forwarding stations.

* * * * *

(36) *Repeater.* An amateur station that simultaneously retransmits the transmission of another amateur station on a different channel or channels.

* * * * *

3. Section 97.109(e) is revised to read as follows:

§ 97.109 Station control.

* * * * *

(e) No station may be automatically controlled while transmitting third party communications, except a station participating as a forwarding station in a message forwarding system.

4. Section 97.205 is amended by adding new paragraph (g) to read as follows:

§ 97.205 Repeater station.

* * * * *

(g) The control operator of a repeater that retransmits inadvertently communications that violate the rules in this Part is not accountable for the violative communications.

§ 97.216 [Redesignated as § 97.217]

5. Section 97.216 is redesignated as Section 97.217.

6. Section 97.219 is added to read as follows:

§ 97.219 Message forwarding system.

(a) Any amateur station may participate in a message forwarding system, subject to the privileges of the class of operator license held.

(b) For stations participating in a message forwarding system, the control operator of the station originating a message is primarily accountable for any violation of the rules in this Part contained in the message.

(c) Except as noted in (d) of this section, for stations participating in a message forwarding system, the control operators of forwarding stations that retransmit inadvertently communications that violate the rules in this Part are not accountable for the violative communications. They are, however, responsible for discontinuing such communications once they become aware of their presence.

(d) For stations participating in a message forwarding system, the control operator of the first forwarding station must:

(1) Authenticate the identity of the station from which it accepts communications on behalf of the system; or

(2) Accept accountability for any violation of the rules in this Part contained in messages it retransmits to the system.

[FR Doc. 94–9483 Filed 4–20–94; 8:45 am]
BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1502, 1503, 1506, 1509, 1510, 1514, 1515, 1516, 1517, 1522, 1530, 1531, 1532, 1533, 1536, 1542, 1545, and 1552

[FRL–4876–1]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule makes numerous administrative changes to the Environmental Protection Agency (EPA) Acquisition Regulation (EPAAR). These changes modify existing review and approval levels for various contract actions and modify the dollar threshold for internal review of contract actions. This revision also includes a streamlining of the regulations for establishing the EPA Architect-Engineer Evaluation Board. These changes will expedite the processing of contract actions while still ensuring proper administrative review, and are based on a reorganization of the major contracting activities within the Agency.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: Frances Smith, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–9948.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation (FAR) requires Federal agencies to publish review and approval levels for various contract actions as part of the Agency's regulations supplementing the FAR. At EPA, these review and approval levels are contained in the EPAAR. The EPA Office of Acquisition Management (OAM) has reorganized and established six Division Director positions reporting directly to the Head of the Contracting Activity (HCA). These revisions to the EPAAR define the position of Division Director as the newly-designated Chiefs of the Contracting Office (CCO), and modify review and approval levels in the EPAAR, primarily to delegate authority from the HCA to the CCO. Additionally, these revisions modify the dollar thresholds for internal review of contract actions. Finally, this revision includes a streamlining of the regulations for establishing the EPA Architect-Engineer Evaluation Board. These changes will expedite the processing of contract actions while ensuring proper administrative review.

B. Executive Order 12866

This is not a significant regulatory action under Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The rule merely revises EPA's internal review and approval procedures. The rule has no substantive

impact on the EPA Source Selection Procedures in 48 CFR subpart 1515.6.

E. Public Comments

The EPA has not solicited public comments on this final rule since it does not have a significant cost or administrative impact on contractors or offerors.

List of Subjects in 48 CFR Parts 1501, 1502, 1503, 1506, 1509, 1510, 1514, 1515, 1516, 1517, 1522, 1530, 1531, 1532, 1533, 1536, 1542, 1545, and 1552

General, Definition of Words and Terms, Improper Business Practices and Personal Conflicts of Interest, Competition Requirements, Contractor Qualifications, Specifications, Standards, and Other Purchase Descriptions, Sealed Bidding, Contracting By Negotiation, Types of Contracts, Special Contracting Methods, Application of Labor Laws to Government Acquisitions, Cost Accounting Standards, Contract Cost Principles and Procedures, Contract Financing, Protests, Disputes, and Appeals, Construction and Architect-Engineer Contracts, Contract Administration, Government Property, Solicitation Provisions and Contract Clauses.

Dated: April 6, 1994.

Betty L. Bailey,

Director, Office of Acquisition Management.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR parts 1501, 1502, 1503, 1506, 1509, 1510, 1514, 1515, 1516, 1517, 1522, 1530, 1531, 1532, 1533, 1536, 1542, 1545, and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 as amended, 48 U.S.C. 486(c).

2. In the list below, for each citation listed in the left column, remove the wording indicated in the middle column from wherever it appears in the citation and replace it with the wording indicated in the right column.

Citation	Remove	Replace with
1501.301	Director, Office of Administration	Director, Office of Acquisition Management.
1501.602–3(c)(2)	Responsible Procurement and Contracts Management Division (PCDM) Associate Director.	Chief of the Contracting Office.
1501.602–3(c)(3)	Responsible PCMD Associate Director	Chief of the Contracting Office.
1503.301	Responsible Associate Director (RAD)	Chief of the Contracting Office (CCO).
1503.408–1	RAD	CCO.
1503.409	RAD	CCO.
1503.502	RAD	CCO.
1506.202	Responsible Associate Director (RAD)	CCO.
1509.170–4(b)(1)	Contracts Management Division	Policy Training and, Oversight Division (PTOD), Office of Acquisition Management, 3802F.
1509.170–4(b)(2)	Quality Assurance Section, Procurement and Contracts Management Division.	Quality Assurance Branch, Office of Management, 3802F.
1509.170–4(b)(3)	Quality Assurance Section, Procurement and Contracts Management Division.	Quality Assurance Branch, Office of Acquisition Management, 3802F.
1509.170–4(d)	Quality Assurance Section, PCMD	Quality Assurance Branch, Office of Acquisition Management.
1509.170–4(e)	Quality Assurance Section, Procurement and Contracts Manage ment Division.	Quality Assurance, Office of Acquisition Management.
1509.170–4(f)	Quality Assurance Section	Quality Assurance Branch, Office of Acquisition Management.
1509.506(b)	Director, Office of Administration	Quality Assurance Branch, Office of of Acquisition Management.
1510.007	Responsible Associate Director (RAD)	CCO.
1514.201–7	Responsible Associate Director (RAD)	CCO.
1514.404–1	RAD	CCO.
1515.604(a)	Chief of the Contracting Activity (CCO)	Contracting Officer.
1515.608(e)	Head of the Contracting Activity	CCO.
1515.609(b)	($25,000,000 for Superfund)	($25,000,000 for ADP and Superfund).
1515.610–70(b)	Procurement and Contracts Management Division.	Office of Acquisition Management.
1515.612(a)(1) introductory text	($25,000,000 for Superfund)	($25,000,000 for ADP and Super-fund).
1515.612(a)(1)(i)	RAD	CCO.
1515.612(a)(1)(ii)	Chief of the Contracting Office (CCO) or, in his/her absence, the Acting CCO.	Branch Chief or as otherwise designated by the CCO.
1515.612(a)(2) introductory text	($25,000,000 or less for Superfund)	($25,000,000 or less for ADP and Superfund).
1515.804–3	Responsible Associate Director (RAD)	CCO.
1515.902(c)	RAD	CCO.
1515.1003	CCO	Contracting Officer.
1516.404–276(a) introductory text	Responsible Associate (RAD)	CCO.
1516.404–277 introductory text	RAD	CCO.
1516.603–3	RAD	CCO.
1517.202(a)	Responsible Associate Director (RAD)	CCO.
11522.608–4	Responsible Associate Director (RAD)	CCO.
11522.803	RAD	CCO.
11522.1306	RAD	CCO.
11522.1403	RAD	CCO.
11530.304	Responsible Associate Director (RAD)	CCO.
11531.101	Procurement Policy Staff	Procurement Policy Branch.

Citation	Remove	Replace with
11532.102	Responsible Associate Director (RAD)	CCO.
11533.209	Responsible Associate Director (RAD)	CCO.
11533.212(a)(3)	Responsible Associate Director (RAD)	CCO.
	Policy and Quality Assurance Branch	Quality Assurance Branch.
	Procurement and Contracts Management Division.	Office of Acquisition Management.
11533.212(b)(4)	Procurement and Contracts Management Division.	Office of Acquisition Management.
11536.201(d)	Quality Assurance Section, Procurement and Contracts Management Division.	Quality Assurance Branch, Office of Acquisition Management,
11536.201(e)	Quality Assurance Section	Quality Assurance Branch.
11536.209(c)	Responsible Associate Director (RAD)	CCO.
11536.602–4	RAD	CCO.
11542.705–1(a)	Cost Policy and Rate Negotiation Section (CPRN).	Cost Policy and Rate Negotiation Branch (CPRN).
	Procurement and Contracts Management Division.	Office of Acquisition Management.
11542.705–1(b)(1)(i)	Cost Policy and Rate Negotiation Section (CPRN).	Cost Policy and Rate Negotiation Branch (CPRN).
11542.708(c)	Cost Policy and Rate Negotiation Section (CPRN).	Cost Policy and Rate Negotiation Branch (CPRN).
	Procurement and Contracts Management Division.	Office of Acquisition Management.
11542.1202(a)	Procurement and Contracts Management Division (PCMD).	Policy, Training and Oversight Division (PTOD).
11542.1202(b)	Procurement Policy Staff, PCMD	Procurement Policy Branch, Policy, Training and Oversight Division (PTOD).
11542.1203(c)	Procurement and Contracts Management Division.	Policy, Training and Oversight Division.
11545.403	Responsible Associate Director (RAD)	CCO.
11552.242–70(a)	Cost Policy and Rate Negotiation Section, (PM–214F), Procurement and Contracts Management Division.	Cost Policy and Rate Negotiation Branch, (3804F), Cost Advisory and Financial Analysis Division.

3. Subpart 1502.1 is revised to read as follows:

Subpart 1502.1—Definitions

Chief of the Contracting Office (CCO) means the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park and Cincinnati.

Head of the Contracting Activity (HCA) means the Director, Office of Acquisition Management.

Legal Counsel means those attorneys assigned to the Contracts Law Branch and the Research Triangle Park General Counsel Branch, Office of the General Counsel and designated by the Assistant General Counsel as Contract Law Specialists.

Procurement Executive (PE) means the Director, Office of Acquisition Management.

4. Section 1536.602–2 is revised to read as follows:

1536.602–2 Establishment of evaluation boards.

(a) The Environmental Protection Agency Architect-Engineer Evaluation Board is established as a central permanent Board located at Headquarters EPA under authority delegated to the Director, Office of Acquisition Management. The Board shall perform all architect-engineer evaluations on an agency-wide basis. The Agency Board shall be composed of not less than three nor more than five voting members and one non-voting advisory member from the contracting office. The following constitutes the minimum composition of the Architect-Engineer Evaluation Board:

(1) *Member and Chairperson.* Chief, Engineering, Planning, and Architecture Branch, Facilities Management and Services Division or his/her designee;

(2) *Member.* A professional engineer or architect from EPA to be designated by the Chairperson;

(3) *Member.* A program official initiating the requirement or a designated representative; and

(4) *Advisory Member.* A Contracting Officer or his/her representative.

(b) The Chief of the Contracting Office (CCO) is delegated the authority to appoint either one or two additional voting members as may be appropriate for a particular project.

(c) In the event of an emergency or extended absence, a member may designate, in writing, with the concurrence of the Chairperson, an alternate experienced in architecture, engineering, or construction to serve in his/her absence.

(d) The duties of the advisory member shall include, but not be limited to, the following:

(1) Assuring that the criteria set forth in the public notice are applied in the evaluation process; and

(2) Assuring that actions taken during the evaluation process do not compromise subsequent procurement actions.

[FR Doc. 94–9667 Filed 4–20–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 940123–4023; ID.# 121493B]

RIN 0648–AG03

Northern Anchovy Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to change the administrative procedure for

announcing the annual spawning biomass and harvest quotas for the northern anchovy fishery. In the past, time constraints have led to shortening the public's review time and making the announcement of harvest quotas after the opening date of the fishing season specified in the Northern Anchovy Fishery Management Plan (FMP). The new procedure provides for the announcement of quotas by interim final rule before August 1, the beginning of the fishing season, and provides for a longer review period before final quotas are announced.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Morgan at (310) 980–4036.

SUPPLEMENTARY INFORMATION: Each year, allotting time for processing and public review of the annual estimated spawning biomass for the northern anchovy fishery has led to publishing an announcement of the harvest quotas in the **Federal Register** after the opening date of the fishing season specified in the FMP. This is not what was intended when the plan was implemented, but the collection of the data in the winter-spring period on the one hand and the beginning of the fishing season in August on the other leaves only a small window for notification and review.

The fishing seasons and the formula for determining the annual quotas are precisely defined in the fishery management plan. However, the procedure for announcing the quotas is set forth only in Federal regulations. The final rule amends 50 CFR 662.20(a) to specify a preliminary review, followed by an announcement of interim final quotas in the **Federal Register** before August 1, the beginning of the fishing season. After the fishery begins in August, additional public review and review by the Pacific Fishery Management Council (Council) would result in a final determination. The only basis for changing the quotas is determination of an error in the data used or in the calculations. If such an error were identified, revised quotas would be announced based on the new information.

If a quota is taken before the entire review of the relevant background material is completed, the fishery will be closed.

The address of the Director, Southwest Region, NMFS, in § 662.2 is updated to reflect the current location in Long Beach, California.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the Magnuson Act and other applicable law.

Because this rule affects procedure only, under the Administrative Procedure Act (5 U.S.C. 553), it may be, and is being, made immediately effective without prior notice and opportunity for comment thereon, or without a 30-day delay in effective date.

This rule is not subject to review under Executive Order 12866.

List of Subjects in 50 CFR Part 662

Fisheries.

Dated: April 15, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth above, 50 CFR part 662 is amended as follows:

PART 662—NORTHERN ANCHOVY FISHERY

1. The authority citation for part 622 continues to read as follows:

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

2. In § 662.2, the definition of *Regional Director* is revised to read as follows:

§ 662.2 Definitions.

* * * * *

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

* * * * *

3. In § 662.20, paragraph (a) is revised to read as follows:

§ 662.20 Harvest quota.

(a) *Announcement of harvest quotas.* The total harvest quota, reduction harvest quota, subarea B harvest quota, and special allocations will be determined by the *Regional Director* from the estimated spawning biomass according to the formulas in paragraph (b) of this section, and will be announced on or about August 1 as interim final quotas. The quotas will be announced according to the following procedure:

(1) No less than 14 calendar days before the meeting of the Council's Anchovy Planning team and Advisory Subpanel, a notice will be published in the **Federal Register** notifying the public when the estimate of the annual spawning biomass will be available. The notice also will announce the date and location of a meeting of the Council's Anchovy Planning team and Advisory Subpanel, where the estimated spawning biomass and the annual quotas will be reviewed and public comments received. This meeting is expected to convene during the second week of June.

(2) All materials relating to the annual quotas will be forwarded to the Council and its Scientific and Statistical Committee and will be available for public inspection at the Office of the *Regional Director.*

(3) On or about August 1, the interim final quotas will be published in the **Federal Register** with an opportunity for public comment.

(4) At a regular meeting of the Council, the Council will review the estimated spawning biomass and harvest quotas and offer time for public comment. The Council will either accept the harvest quotas as published or recommend to the *Regional Director* that the numbers be revised. If a revision is requested, a justification for the revision must be provided. An annual quota may be adjusted only if inaccurate data were used or if errors were made in the calculations.

(5) If the *Regional Director* determines that a change in a harvest quota is justified, NMFS will publish a notice in the **Federal Register** notifying the public of the change and the reasons for the change. If no changes are necessary, the interim final quotas will become final quotas, and no notice will be published.

* * * * *

[FR Doc. 94–9599 Filed 4–20–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 77
Thursday, April 21, 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 Marketing Service

7 CFR Part 59

[Docket No. PY–94–003]

Mandatory Egg Products Inspection—Shell Egg Breaking

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Solicitation of comments.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on the mandatory egg products inspection program relative to the mechanical breaking of shell eggs. AMS invites written comments on whether it is essential that the egg shell be presented together with the egg contents for inspection by the breaking machine operator in order to determine the wholesomeness of each egg. Consideration of this issue is necessary due to a request for approval from an equipment manufacturer which utilizes shell egg breaking technology substantially different from that previously approved by USDA. This solicitation is an opportunity for all interested parties to provide AMS with comments, data, and recommendations in order that all available information can be considered.

DATES: Comments must be received on or before June 6, 1994.

ADDRESSES: Send written comments, in duplicate, to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, Room 3944–South, P.O. Box 96456, Washington, DC 20090–6456. Comments received may be inspected at this location between 8 a.m and 4:30 p.m., Eastern Time, Monday through Friday, except holidays. State that your comments refer to Docket No. PY–94–003.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, 202–720–3271.

SUPPLEMENTARY INFORMATION:

Background

The Egg Products Inspection Act (EPIA)(21 U.S.C. 1031 *et seq.*) directs the Secretary of Agriculture to maintain an egg products inspection program designed to assure consumers that eggs and egg products distributed to them are wholesome, not adulterated, and properly labeled and packaged. The program, among other things, requires plants processing egg products for commerce to operate under mandatory continuous inspection and be subject to the program's sanitary, processing, and facility requirements.

Section 6 of the EPIA (21 U.S.C. 1035) states that each official plant shall be operated in accordance with sanitary practices and shall have premises, facilities, and equipment as are required by the regulations which the EPIA authorizes the Secretary to promulgate to carry out the purposes or provisions of the EPIA.

In addition to specifying the design, material, and construction of shell egg breaking equipment (7 CFR 59.502), the regulations require that each shell egg be broken in a satisfactory and sanitary manner and inspected for wholesomeness by smelling the shell or the egg meat and by visual examination at the time of breaking (7 CFR 59.522(f)).

AMS has received a request from a firm seeking USDA approval of an egg breaking machine with a design concept which differs significantly from breaking machines currently accepted by USDA for use in officially inspected plants. On currently accepted equipment, the contents of each individual broken-out egg, together with its shell, are presented for inspection at the same moment. On the newly designed machine, only the broken-out egg contents are presented at that time.

Consequently, AMS must consider the issue of whether the absence of the shell from its respective contents lessens the ability of the operator to determine the wholesomeness of each individual egg. Through this solicitation, AMS invites comments from all interested persons in the public concerning this issue.

AMS is not proposing a change to its current regulations at this time, or even suggesting that a change might be needed if a new design concept breaker were approved. However, due to this technology and the increasing frequency with which other new and different technologies are being developed, AMS must be prepared to evaluate all ideas and determine their potential use without compromising the integrity of the EPIA program. Accordingly, it is important that all parties with an interest in this issue assist AMS in this evaluation.

Dated: April 15, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–9589 Filed 4–20–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 500, 545, 552, 563, 563b, 574

[No. 93–192]

Miscellaneous Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing several technical corrections and clarifications to its regulations on home loans and other real estate loans, its operating subsidiary regulation, and its incorporation and standard conversion regulations. The OTS is also proposing to amend its insider transactions rule and remove or revise obsolete or superseded provisions concerning investment limitations, stock ownership and remote service units. A waiver provision is also being proposed.

DATES: Comments on this proposed rule must be received on or before May 23, 1994.

ADDRESSES: Comments should be sent to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington DC 20552. Attention Docket No. 93–192. These submissions may be hand delivered to 1700 G Street NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be

available for public inspection at 1700 G Street, NW., from 1 to 4 p.m. on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Mary Gottlieb, Senior Paralegal, (202) 906–7135, or Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION: The OTS is today proposing several technical corrections to revise, clarify or remove obsolete or ambiguous regulations.

Stock Loans

Section 205 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA)[1] amended section 7(j)(9) of the Federal Deposit Insurance Act and modified the reporting criteria and procedures of that section, thereby superseding existing § 574.5(b) of OTS's regulations. Rather than amend § 574.5(b) to conform to amended section 7(j)(9), the OTS has chosen to rescind the regulation because the statute is self-implementing and OTS finds it unnecessary merely to repeat the statutory language.

Directors

Through its final rule on regulatory review,[2] the OTS lowered the number of directors required for a Federal savings association from seven to five, consistent with the required number of national bank directors. An additional reference in § 552.3, which was overlooked in the earlier rulemaking, is now being changed to conform with the new requirement.

Operating Subsidiaries

The OTS has received questions regarding whether, under 12 CFR 545.81(d), a Federal savings association that wants a service corporation it owned on November 30, 1992 (the effective date of the operating subsidiary regulation) to be deemed an operating subsidiary must file an application if the federal savings association was ineligible for expedited treatment on November 30, 1992, but currently is eligible for expedited treatment. The agency's intent was and continues to be to require an application only if the association is currently, rather than historically, ineligible for expedited treatment. Similarly, the ownership language in the current regulation has given rise to some confusion. The agency has consistently applied this paragraph only to service corporations that the federal savings association owned both on November 30, 1992 and on the date it seeks to have the service corporation deemed an operating subsidiary, not to service corporations owned by another entity on November 30, 1992.

The OTS is therefore proposing a clarifying technical amendment restructuring § 545.81(d). This replacement language more clearly sets forth the requirements that apply when a federal savings association that owned a service corporation on November 30, 1992, wishes to have that service corporation deemed an operating subsidiary.

Insider Transactions

Pursuant to and in accordance with section 4(a) of the Home Owners' Loan Act and section 106(b)(2)(H)(i) of the Bank Holding Company Amendments Act of 1970,[3] as revised by section 306(j) of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"),[4] the OTS proposes to amend its regulation pertaining to insider transactions by incorporating by means of cross-reference subpart B of the Federal Reserve Board's Regulation O, 12 CFR part 215, subpart B, as now or hereafter in effect.

Section 306(j) of FDICIA amended section 106 of the Bank Holding Company Amendments Act of 1970 to make it applicable to all savings banks and savings associations (as those terms are defined in section 3 of the Federal Deposit Insurance Act[5]). Subpart B of Regulation O implements and refines the requirements of section 106 with respect to banks that are members of the Federal Reserve System. Because savings associations must also now comply with section 106, the OTS believes it is appropriate and consistent with the goal of regulatory uniformity to apply subpart B of Regulation O to savings associations as well.

Investments

Section 563.96, which restricts the amount savings associations may invest in savings accounts and debt securities hedged with forward commitments according to a complex formula set forth in the rule, is being removed in light of the Federal Reserve Board's (FRB) final rule on interbank liabilities.[6] The FRB's final rule limits such investments to 25% of capital. Since the FRB rule applies to savings associations, § 563.96 would be deleted as unnecessary.

Loan Documentation

The OTS is proposing to amend its interim final loan documentation regulation to broaden eligibility to any institution that was assigned a MACRO rating of 3 in its most recent report of examination and that has obtained written permission from its Regional Director to employ the exemption. The agency believes that this change is consistent with both encouraging lending to creditworthy borrowers and maintaining adequate safety and soundness safeguards.

Conversions

A conforming amendment is being made to the OTS's standard conversion regulations to conform section 563b.3, restricting the repurchase of stock and payment of dividends, to prompt corrective action standards.

Remote Service Units

Section 545.141 governs the establishment of Remote Service Units (RSUs)[7] by federal savings associations. Technological and regulatory changes since the regulation was last revised in 1983 have made certain provisions unnecessary. First, § 545.141(d), which addresses privacy of account data concerning an RSU account, imposes restrictions on federal savings associations that go further than those applicable to other financial institutions. The OTS believes that Regulation E of the Federal Reserve Board, 12 CFR part 205, which governs electronic funds transfers by all financial institutions, including savings associations, provides adequate protection for consumer's interests in this area. Under 12 CFR 205.7(a)(9), an institution must disclose to a consumer the circumstances under which the financial institution in the ordinary course of business will disclose information to third parties concerning the consumer's account. Second, the OTS proposes to revise § 545.141(e) to reflect earlier revisions to 12 CFR part 568, "Minimum Security Devices."

Waivers and Miscellaneous Changes

The agency is adding a provision expressly setting forth its existing authority to waive any non-statutorily required regulation for good cause. This

[1] Public Law 102–242, 105 Stat. 2236 (1991).

[2] 58 FR 4308 (Jan. 14, 1993).

[3] 12 U.S.C. 1972(2)(H)(i).

[4] Public Law 102–242, 105 Stat. 2359.

[5] 12 U.S.C. 1813.

[6] 57 FR 60086 (Dec. 18, 1992).

[7] An RSU is defined as an information processing device by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. The term RSU generally includes point of sale terminals, merchant-operated terminals, cash dispensing machines and automated teller machines.

authority is separate and apart from, and is not meant to limit, the agency's statutorily based authority (e.g., under the Depository Institutions Disaster Relief Act of 1992) to waive certain regulations and its inherent authority to decide whether or not to take enforcement actions against violations of its regulations. See *Heckler* v. *Chaney*, 470 U.S. 821 (1985).

Sections 545.33, 545.35 and 563.93 are being amended to correct internal references.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), it is certified that this technical regulation will not have a significant economic impact on a substantial number of small savings associations, small service corporations or other small entities. It merely revises or removes existing inconsistencies or obsolete regulations.

Executive Order 12866

The Acting Director has determined that this document is not a "significant regulatory action" for purposes of Executive Order 12866.

Paperwork Reduction Act

The recordkeeping requirement contained in this proposed rule has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). The recordkeeping requirement contained in this rule is found at 12 CFR 563.170(c). The likely recordkeepers will be well- or adequately-capitalized savings associations who received a MACRO rating of 1, 2 or 3 in their most recent examinations. The estimated average reduction in burden associated with the increase in the number of institutions eligible to claim the exemption is .5 hours per recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and to the Office of Management and Budget, Paperwork Reduction Project (1550–0011), Washington, DC 20503.

List of Subjects

12 CFR Part 500

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 552 and 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend subchapters A, C and D, chapter V, title 12 of the Code of Federal Regulations as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for part 500 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

1a. Section 500.30 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 500.30 General statement concerning procedures and forms.

(a) * * * The Director may, for good cause and to the extent permitted by statute, waive the applicability of any provision of this chapter.

* * * * *

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

2. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.33 [Amended]

3. Section 545.33 is amended by removing the phrase "this paragraph (e)" in the first sentence of the introductory text to paragraph (c), adding in lieu thereof the phrase "this paragraph (c)".

§ 545.35 [Amended]

4. Section 545.35 is amended by removing the phrase "this paragraph (d)" in the second sentence of paragraph (b), adding in lieu thereof the phrase "this paragraph (b)".

5. Section 545.81 is amended by revising paragraph (d) heading, paragraph (d)(1) introductory text, and paragraph (d)(2), and by adding paragraph (d) introductory text to read as follows:

§ 545.81 Operating subsidiaries.

* * * * *

(d) *Converting service corporations to operating subsidiaries.* A service corporation that on November 30, 1992 was owned by a Federal savings association and engaged in activities permissible for a Federal savings association to undertake directly; is owned by that Federal savings association; engages solely in activities that a Federal savings association may undertake directly; and meets the control criteria set forth in this section, may be deemed to be an operating subsidiary provided that:

(1) If the Federal savings association is eligible for "expedited treatment" under § 516.3 of this chapter, the Federal savings association creates and maintains appropriate internal records. The record shall consist of a certification by the Board of Directors of the association containing:

* * * * *

(2) If the Federal savings association is not eligible for "expedited treatment" under § 516.3 of this chapter, the Federal savings association follows the application procedures set forth in paragraph (c)(2) of this section and receives the OTS's prior written approval. The corporation will be deemed to be an operating subsidiary on the date of the OTS's written approval.

* * * * *

5a. Section 545.141 is amended by removing and reserving paragraph (d); and by revising paragraph (e) to read as follows:

§ 545.141 Remote Service Units (RSUs).

* * * * *

(e) *Security.* A Federal savings association shall protect electronic data against fraudulent alterations or disclosure. All RSUs shall meet the minimum security devices requirements of part 568 of this chapter.

* * * * *

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

6. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.3 [Amended]

7. Section 552.3 is amended by removing the paragraph designation for paragraph (a) and by removing the phrase "fewer than seven" in section 7 of the federal stock charter form, and adding in lieu thereof the phrase "fewer than five".

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

8. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Public Law 102–242, sec. 306, 105 Stat. 2236, 2355 (1991).

9. Section 563.43 is amended by revising the introductory text and by adding a new paragraph (e) to read as follows:

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

Pursuant to 12 U.S.C. 1463(a) and 1468, a savings association, its subsidiaries and its insiders (as defined) shall be subject to the restrictions contained in subparts A and B of 12 CFR part 215, the Federal Reserve Board's Regulation O, with the exception of 12 CFR 215.13, in the same manner and to the same extent as if the association were a bank and a member bank of the Federal Reserve System, except that:

* * * * *

(e) References to the Reserve Bank or the Comptroller shall be deemed to include the Director of the Office of Thrift Supervision.

§ 563.93 [Amended]

10. Section 563.93 is amended by removing the phrase "paragraph (b)(13) of this section" in paragraph (f)(1) and adding in lieu thereof the phrase "paragraph (b)(11) of this section".

§ 563.96 [Removed]

11. Section 563.96 is removed.

12. Section 563.170 is amended by revising paragraph (c)(10)(i)(B) to read as follows:

§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) * * *

(10) * * *

(i) * * *

(B) *Eligible savings association* means any savings association that is well- or adequately-capitalized, as defined in 12 CFR part 565 and was either:

(*1*) Assigned a CAMEL rating of 1 or 2 in its most recent report of examination; or

(*2*) Assigned a CAMEL rating of 3 in its most recent report of examination and has obtained written permission from the Regional Director to employ this exemption.

* * * * *

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

13. The authority citation for part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a; 15 U.S.C. 78c, 78*l*, 78m, 78n, 78w.

§ 563b.3 [Amended]

14. Section 563b.3 is amended by removing the phrase "ratio of regulatory capital (as defined in 12 CFR 567.1) to total liabilities below 6%" in paragraph (g)(3)(ii), and adding in lieu thereof the phrase "prompt corrective action category (as defined in 12 CFR part 565) to below adequately capitalized".

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

15. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

§ 574.5 [Amended]

16. Section 574.5 is amended by removing the phrase "and other reports" from the section heading; by removing paragraph (b); by removing the phrase "reports and" from paragraph (c); and by redesignating paragraph (c) as new paragraph (b).

Dated: October 1, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

Editorial note: This document was received at the Office of the Federal Register on April 15, 1994.

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INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 207

Advance Notice of Proposed Rulemaking Concerning the Treatment of Business Proprietary and Confidential Business Information

AGENCY: International Trade Commission.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Commission is considering revision of its rules of general application and its rules concerning antidumping and countervailing duty investigations to change its procedures for defining business proprietary information (BPI) and confidential business information (CBI), disclosing such information under administrative protective order (APO), responding to breaches of APO, and serving petitions.

The Commission hereby solicits written comments from interested persons to aid the Commission in determining whether the subject amendments should be made. For guidance on specific issues that the Commission would like to have commenters address, see the Supplementary Information section of this notice.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the revisions will be promulgated in accordance with the Administrative Procedure Act (APA) (5 U.S.C. § 553), and will be codified in 19 CFR Parts 201 and 207.

DATES: Comments will be considered if received on or before June 20, 1994.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3102. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedure and rules and regulations as it deems necessary to carry out its functions and duties. Part 201 of title 19 of the Code of Federal Regulations currently sets forth procedures of general application to nonadjudicative investigations, and in particular defines BPI and CBI and establishes procedures for their handling. Part 207 of title 19 sets forth procedures for antidumping and countervailing duty investigations, and

in particular provides for the filing of petitions, the handling of BPI, and the disclosure of BPI under APO.

The Commission has engaged in a number of meetings with representatives of the international trade bar at which various concerns about Commission practice were put forward. Some of those concerns have been addressed by changes in internal policies. Others cannot properly be addressed without changes to the Commission's rules. Consequently, the Commission has determined to issue the present advance notice of proposed rulemaking to acquaint the public with the rules changes contemplated by the Commission and to seek public comment on those proposed changes.

The Commission would like to have all commenters address the following proposed revisions. Certain conventions have been used to highlight the proposed revisions to the rules. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

1. Section 201.6 is proposed to be revised expressly to allow parties and the Commission publicly to discuss confidential statistics in nonquantitative characterizations unless the submitter provides good cause for confidential treatment of such characterizations. In particular, the revision would permit the discussion of trends in such statistics, e.g., whether the difference between two confidential figures shows an increase or a decrease. This revision would apply only to CBI and BPI submitted in numerical form; textual CBI and BPI would not be disclosed in any form. This revision would address a concern expressed by practitioners that the Commission's definition of CBI and BPI may overly restrict use of such information. The revision would also define nondisclosable BPI as described in 19 U.S.C. § 1677f(c)(1)(A) and clarify the procedure for submitting such information. Section 201.6 as revised would read as follows:

§ 201.6 Confidential business information.

(a) *Definition*►s◄. ►(1)◄ Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. The term "confidential business information" includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)). ►Nonnumerical characterizations of numerical confidential business information (e.g. discussion of trends) will be treated as confidential business information only at the request of the submitter for good cause shown.◄

►(2) Nondisclosable confidential business information is confidential business information that is privileged, classified, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. Special rules for the handling of such information are set out in section 207.7 of this chapter.◄

(b) *Procedure for submitting business information in confidence.* (1) A request for confidential treatment of business information shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(2) In the absence of good cause shown, any request relating to material to be submitted during the course of a hearing shall be submitted at least three (3) working days prior to the commencement of such hearing.

(3) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential business information, under paragraph (a)[(2)] of this section, the submitter shall provide the following, which may be disclosed to the public:

(i) A written description of the nature of the subject information;

(ii) A justification for the request for its confidential treatment;

(iii) A certification in writing under oath that substantially identical information is not available to the public;

(iv) A copy of the document (A) clearly marked on its cover as to the pages on which confidential information can be found, [and] (B) with information for which confidential treatment is requested clearly identified by means of brackets; and ►(C) with information for which nondisclosable confidential treatment is requested clearly identified by means of double brackets◄ (except when submission of such document is withheld in accord with paragraph (b)(4) of this section);

(v) A nonconfidential copy of the documents as required by § 201.8(d).

(4) The submission of the documents itemized in paragraph (b)(3) of this section will provide the basis for rulings on the confidentiality of submissions, including rulings on the confidentiality of submissions offered to the Commission which have not yet been placed under the possession, control, or custody of the Commission. The submitter has the option of providing the business information for which confidential treatment is sought at the time the documents itemized in paragraph (b)(3) of this section are provided or of withholding them until a ruling on their confidentiality has been issued.

(c) *Identification of business information submitted in confidence.* Business information which a submitter desires to be treated as confidential shall be clearly labeled "confidential business information" when submitted, and shall be segregated from other material being submitted.

(d) *Approval or denial of requests for confidential treatment.* Approval or denial of requests shall be made only by the Secretary or Acting Secretary. A denial shall be in writing, shall specify the reason therefor, and shall advise the submitter of the right to appeal to the Commission.

(e) *Appeals from denial of confidential treatment.* (1) For good cause shown, the Commission may grant an appeal from a denial by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall clearly indicate that it is a confidential submission appeal. An appeal may be made within twenty (20) days of a denial or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension, notice in writing with the reasons therefor, has been provided the person making the appeal.

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for his consideration as part of an amended request. For purposes of paragraph (e)(1) of this section, the twenty (20) day period for filing an appeal shall be tolled on the filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

(f) *Appeals from approval of confidential treatment.* An appeal from an approval of a request for confidential treatment of a submission shall be made to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, D.C. 20436, shall comply with § 201.17 through § 201.19 of the Commission's rules of practice and procedure implementing the Freedom of Information Act, and shall show that a copy thereof has been served upon the submitter.

(g) *Granting confidential status to business information.* Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings.

(h) *Scope of provisions.* The provisions of §§ 201.6(b) and 201.6 (d) through (g) shall not apply to adjudicative investigations under Subchapter C, Part 210, of the Commission's rules of practice and procedure.

2. Section 207.3 is proposed to be revised to require that notices of petition (further dealt with in the proposed revisions to § 207.10 discussed below) and certain other documents be served, if by mail, by overnight mail with Saturday delivery requested. This revision, which recognizes the increasingly wide availability of Saturday delivery, seeks to ensure that parties receive service of important documents as rapidly as possible. Another revision would clarify that recipients of confidential briefs must not rely on the initial bracketing of such briefs in discussing the information contained therein with persons not authorized to view business proprietary information. Section 207.3 as revised would read as follows:

§ 207.3 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of the petitioner or any other interested party for inclusion in the record, and any person submitting a response to a Commission questionnaire, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) *Service.* Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 207.7, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding section 201.16 of this chapter, ◆notices of petition,◆ petitions, briefs, and testimony filed by parties pursuant to §§ 207.10, 207.15, 207.22, 207.23, and 207.24 shall be served by hand or, if served by mail, by overnight mail ◆(with Saturday delivery requested)◆ or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

(c) *Filing.* Documents to be filed with the Commission must comply with applicable rules, including § 201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes business proprietary information in the document, the submitter is to file and, if the submitter is a party, serve the business proprietary version of the document on the deadline and may file and serve the nonbusiness proprietary version of the document no later than one business day after the deadline for filing the document. The business proprietary version shall enclose all business proprietary information in brackets and have the following warning marked on every page: "Bracketing of BPI not final for one business day after date of filing." The bracketing becomes final one business day after the date of filing of the document, *i.e.*, at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not ◆rely on it in discussing◆ [divulge any part of] the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information are permitted after the deadline. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

3. Section 207.7 is proposed to be revised to permit party representatives to apply for disclosure of business proprietary information under APO between the end of a preliminary investigation and the beginning of a final. The revision would also make it easier for a party who is changing representatives to transfer the case file from one representative to the other.

Section 207.7 would further be revised to provide that, for each law firm or consulting firm representing a party, only one lead signatory would apply for disclosure of BPI under APO, and assume ultimate responsibility for handling BPI within the firm. Other professionals and clericals would obtain access to BPI under the APO upon their addition to a roster. This revision would clarify who is responsible for breaches of APO and streamline the procedure for disclosing BPI under APO to professionals and clericals other than the lead signatory. Professionals would still be subject to sanctions for breach,

and the lead signatory would be liable for the breaches of anyone (professional or clerical) who breached an APO while under his supervision.

Another revision would delete a number of strictures on the handling of BPI that currently appear in Commission APOs in Title VII investigations. These deletions reflect a shift away from directing firms in detail how to run their offices. The phrase "competitive decisionmaking" would be more fully defined in terms used by the court in the case cited in the current rules.

In addition, the revised rule would define a sanctionable breach. Three alternative definitions are proposed: (1) Any breach would be sanctionable; (2) only breaches resulting in actual disclosure of BPI would be sanctionable; and (3) only breaches resulting in actual harm to the submitter of the BPI would be sanctionable. The Commission seeks comments on the advisability of each of the three alternatives. The revision would also codify the Commission's existing practice of taking actions, such as issuing warning letters, that do not constitute sanctions. Section 207.7 as revised would read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

(a) (1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which (i) describes in general terms the information requested, and (ii) sets forth the reasons for the request (*e.g.*, all business proprietary information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except ◆nondisclosable confidential business information◆ [privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets]) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term "business proprietary information" has the same meaning as the term "confidential business information" as defined in § 201.6 of this chapter.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. An ◆initial◆ application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance ◆and before the date established by the Secretary under § 207.7(c).◆ [but at least five (5) days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in a preliminary investigation, and shall] ◆They need◆ not be served with business proprietary information◆, unless subsequently one becomes the lead authorized applicant.◆

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(I) An attorney for an interested party which is a party to the investigation;

(II) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(I) of this section;

(III) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation; or

(IV) A representative of an interested party which is a party to the investigation, if such interested party is not represented by counsel.

(ii) ◆Only one authorized applicant at each firm or office representing a party may file an application.◆

◆(iii)◆ In addition, an authorized applicant must not be involved in competitive decisionmaking[, as defined in *U.S. Steel Corp.* v. *United States*, 730 F.2d 1465 (Fed. Cir. 1984),] for an interested party which is a party to the investigation. ◆Involvement in "competitive decisionmaking" includes activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).◆

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific business proprietary information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, or seven (7) days in a preliminary investigation, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information, or ten (10) days in a preliminary investigation. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final for purposes of review by the U.S. Court of International Trade under section 777(c)(2) of the Act.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute business proprietary information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f).

(iii) The Secretary shall release business proprietary information only to an authorized applicant whose application has been accepted and who presents the application along with adequate personal identification; or a person ◆on a roster◆ described in paragraph (b)(1)(iv) of this section who presents a copy of the ◆roster◆ [statement] referred to in that paragraph along with adequate personal identification.

(iv) An authorized applicant granted access to business proprietary information in a preliminary investigation may, subject to paragraph (c) of this section, retain such business proprietary information during any final investigation corresponding to that preliminary investigation, provided that the authorized applicant has not lost his authorized applicant status (*e.g.*, by terminating his representation of an interested party who is a party). When

retaining business proprietary information pursuant to this paragraph, the authorized applicant need not file a new application in the final investigation[, but shall list in his entry of appearance in the final investigation the authorized applicants in the same firm and the persons employed or supervised by the authorized applicant who continue to participate in the investigation].

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require him to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, he shall:

(1) Not divulge any of the business proprietary information obtained under the administrative protective order and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the business proprietary information was obtained,

(iii) A person whose application for access to business proprietary information under the administrative protective order has been granted by the Secretary, and

(iv) Other persons ▶within the lead authorized applicant's firm or office◀ [, such as paralegals and clerical staff,] who are employed or supervised by the authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decisionmaking for an interested party which is a party to the investigation; and who ▶are on the lead authorized applicant's administrative protective order roster. This roster shall be a list of those within the lead authorized applicant's firm who will have access to business proprietary information disclosed under the administrative protective order. It shall list attorneys, consultants, and experts separately from nonprofessional staff. All those listed must sign an acknowledgment that they have read the lead authorized applicant's administrative protective order application and understand its terms before being given access to business proprietary information. The signature of an attorney, consultant, or expert shall constitute an acknowledgment of responsibility for any breach of the administrative protective order he or she might commit. The authorized applicant may add or delete names from the roster at any time, but must notify the Commission in writing of any such change within two days of the change.◀ [have submitted to the Secretary a signed statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (t]▶T◀he authorized applicant shall be deemed responsible for [such persons'] ▶the◀ compliance with the administrative protective order ▶of any person on his or her roster◀[)];

(2) Use such business proprietary information solely for the purposes of the Commission investigation then in progress or for judicial or other review of such Commission investigation;

[(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such business proprietary information without first having received the written consent of the Secretary and the party or the attorney of the party from whom such business proprietary information was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such business proprietary information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container;

(5) Serve all materials containing business proprietary information as directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing business proprietary information with a cover sheet identifying the materials as containing business proprietary information;

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9)] ▶(3)◀ Report promptly and confirm in writing to the Secretary any breach of the administrative protective order; and

(▶4)◀ [10)] Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions ▶or other actions◀ as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall return or destroy all copies of materials released to authorized applicants pursuant to this section and all other materials containing business proprietary information, such as charts or notes [based on any such information received under administrative protective order], and file with the Secretary a certificate attesting to his personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) [*Sanctions for b*]▶*B◀reach▶es◀ of administrative protective order▶s◀.* ▶(1) *Sanctionable breaches defined.* A sanctionable breach is a breach of an administrative protective order [that results in harm to the submitter of the information] [the results in the actual disclosure of confidential business information to an unauthorized person].◀

▶(2) *Sanctions.*◀ A ▶sanctionable◀ breach of an administrative protective order may subject an offender to:

(▶i◀[1]) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(▶ii◀[2]) Referral to the United States Attorney;

(▶iii◀[3]) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association; and

(▶iv◀[4]) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, and denial of further access to business proprietary information in the current or any future investigations before the Commission.

▶(3) [For all other breaches,] the Commission may take such other action (e.g., a warning letter), that it deems appropriate.◀

(e) *Sanction procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions in accordance with paragraph (d) of this section. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe a breach has occurred and that the person has a reasonable opportunity to present his views on whether a breach has occurred. If subsequently the Commission determines that a breach has occurred,

then the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) the recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two year period, and

(ii) the recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two year period.

Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) *Service.* (1) Any party filing written submissions ♦(other than a petition)♦ which include business proprietary information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and a nonbusiness proprietary version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) [A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for a particular submission by filing a request for exemption with the reasons therefor along with the submission. The Secretary shall not accept the submission into the record but shall hold the submission until the request has been granted or denied. The Secretary shall promptly respond to the request.] If a ♦party's♦ request ♦under paragraph (g) of this section♦ is granted, the Secretary shall accept the [submission] ♦information exempt from disclosure♦ into the record. [If a request is denied, the party shall serve the submission within two (2) days of the denial and file a certificate of service in the form described in paragraph (f)(1) of this section, and the Secretary shall then accept the submission into the record. All submissions which include business proprietary information must be accompanied by a certificate attesting either that complete copies of the submission have been properly served, or that a request for exemption has been filed with the submission.] ♦The party shall serve the submission containing such information in accordance with the requirements of § 207.3(b) and paragraph (f)(1) of this section, with the information redacted from the copies served.♦

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Business proprietary information in submissions must be ♦dealt with as required by § 207.3(c)♦ [clearly marked as such when submitted, and must be segregated from other material being submitted].

(g) *Exemption from disclosure.* ♦(1) *In general.*♦ Any person [submitting business proprietary information to the Commission] may request exemption from the disclosure of [such] ♦business proprietary♦ information under administrative protective order♦, whether the person desires to include such information in a petition filed under § 207.10 of these rules, or any other submission to the Commission during the course of an investigation♦. [A request must be filed in writing with the reasons therefor at the same time as the information being submitted is filed.] Such a request shall only be granted if the Secretary finds that such information is [privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure] ♦nondisclosable confidential business information as defined in section 201.6 of this chapter. The request will be granted or denied not later than thirty (30) days (ten (10) days in a preliminary investigation) after the date on which the request is filed.♦ [In the case of a party, the request shall be treated as a request for exemption from service under paragraph (f) of this section. In the case of a nonparty, the Secretary shall promptly notify the submitter as to whether the request has been approved or denied.]

♦(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the business proprietary information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The business proprietary information for which exemption from disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. Such a request shall only be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all business proprietary information, bracketed in accordance with section 201.6 of this chapter and § 207.3(c). The other two versions shall conform to and be filed in accordance with the requirements of section 201.6 of this chapter and § 207.3, except that the specific information as to which exemption from disclosure was granted shall be redacted from the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. The requester may file the submission in question without that information, in accordance with the requirements of § 207.3.♦

4. Section 207.10 is proposed to be revised to require petitioners to serve on potential respondents a notice of petition and to serve the confidential version of the petition on a party representative as soon as a petitioner is

notified that that representative has had its APO application granted. Trade practitioners have expressed the concern that party representatives whose APO applications have already been approved do not gain access to BPI, and especially the confidential version of the petition, quickly enough in preliminary investigations to prepare for the preliminary conference and the postconference briefs. The revision would quickly apprise potential respondents of the filing of a petition and obligate petitioner to serve the confidential version of the petition more rapidly than is currently done. Section 207.10 as revised would read as follows:

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or 732(b) of the Act, or section 303 of the Act in a case in which a Commission determination under Title VII of the Act is required, shall file copies of the petition, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary. The Secretary shall notify the administering authority of that date. Notwithstanding § 201.11 of this chapter, a petitioner need not file an entry of appearance in the preliminary investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance, although the petitioner must file an entry of appearance in any final investigation corresponding to that preliminary investigation.

(b) ♦*Notice of petition.* On the same day the petitioner files a petition with the Commission, it shall serve a notice of petition on each interested party named in the petition. The notice must state the name of the petitioner and give the address of the Commission. The notice must be served in accord with § 207.3(b). A certificate of service must be filed with the petition.

(c)♦ *Service of the petition.* ♦(1) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 207.7(a)(4), he or she approves an application under § 207.7(a). When practicable, this notification shall be made by facsimile transmission.♦ [A copy of the petition, or a version thereof omitting business proprietary information, shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within two (2) days of the establishment of the Secretary's list.] A copy of the petition including all business proprietary information shall ♦then♦ be served by petitioner on those ♦approved applicants in accord with § 207.3(b) within two (2) calendar days. The petitioner shall serve♦ persons enumerated on the list established by the Secretary pursuant to § 207.7(a)(4) ♦(not already served)♦ within two (2) ♦calendar♦ days of the establishment of the Secretary's list. Service shall be attested by a certificate of service as required in § 201.16(c)(2) of this chapter.

♦(2) A copy of the petition omitting business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within two (2) calendar days of the establishment of the Secretary's list.♦

(c) *Amendments and withdrawals; critical circumstances.* (1) Any amendment or withdrawal of a petition shall be filed on the same day with both the Secretary and the administering authority, without regard to whether the requester seeks action only by one agency.

(2) When not made in the petition, any allegations of critical circumstances under section 303, 703 or 733 of the Act shall be made in an amendment to the petition and shall be filed as early as possible. Critical circumstances allegations, whether made in the petition or in an amendment thereto, shall contain information reasonably available to petitioner concerning the factors enumerated in sections 705(b)(4)(A) and 735(b)(4)(A) of the Act.

(d) *Section 303(a)(1) petitions.* If during an investigation under section 303(a)(1) of the Act a Commission determination under Title VII of the Act becomes required, the Commission shall issue an order instructing petitioner to provide all information reasonably available to it concerning the determination that the Commission is to make in the investigation.

By order of the Commission.

Issued: April 15, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–9632 Filed 4–20–94; 8:45 am]

BILLING CODE 7020–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO31–1–6012; FRL–4876–9]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Emission Controls for Alfalfa Dehydrators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this document, EPA is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the Governor of Colorado on May 6, 1993. The Governor requested that Colorado Regulation No. 5, which contained emission control regulations for alfalfa dehydration plant drum facilities that had begun operation prior to December 31, 1984, be removed from the federally-approved SIP. The State made this request pursuant to the repeal of Regulation No. 5 from the State air quality regulations, which was mandated by amendments to the State's laws relating to the regulation of agricultural sources of air pollution. EPA is proposing to approve this revision because the State provided a modeling demonstration which showed that the removal of the emission limitations in Regulation No. 5 from the SIP would not interfere with attainment or maintenance of the PM–10 National Ambient Air Quality Standards (NAAQS). The effect of this approval, if promulgated, will be to remove the provisions of Regulation No. 5 regarding existing alfalfa dehydrators from the federally-approved SIP.

DATES: Comments on this proposed action must be received in writing by May 23, 1994.

ADDRESSES: Written comments should be addressed to:

Vicki Stamper, 8ART-AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Copies of the State submittal and other relevant information are available for public inspection during normal business hours at the following locations:

Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, U.S.

Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, the Colorado Air Pollution Prevention and Control Act was signed into law. This State Act significantly revised the previously-existing Colorado statutory provisions relating to air quality, including the regulation of agricultural sources of air pollution. Specifically, Section 25–7–109(8) of the Colorado Revised Statutes states that the State "...shall not regulate emissions from agricultural production such as farming, seasonal crop drying, animal feeding, and pesticide application..." unless such a source is otherwise required to meet Federal requirements (e.g., construction or operating permits, new source performance standards, etc.). Colorado's Regulation No. 5 contained emission control regulations for existing alfalfa dehydration plant drum facilities, which fall under the category of seasonal crop drying. Because the State Air Quality Control Commission is now prohibited from regulating air pollution emissions from sources such as seasonal crop drying, the State repealed Colorado Regulation No. 5 and requested that it be removed from the federally-approved SIP.

Only one alfalfa dehydration plant drum facility in the State was subject to Regulation No. 5. This plant is operated by the Graves Ranch company in the vicinity of La Porte, Colorado, which is near the city of Fort Collins in the northern Front Range area of the Colorado Rocky Mountains. The plant only operates during the summer agricultural season (June through October), and it is not currently considered to be a major stationary source. Regulation No. 5 was repealed by the State on March 18, 1993, resulting in the elimination of all State emission control limits for this source. The State subsequently submitted a request to remove Regulation No. 5 from the federally-approved SIP on May 6, 1993.

Section 110(l) of the Clean Air Act (Act), as amended, prohibits EPA from approving a revision to the SIP "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress...or any other applicable requirement of [the Clean Air Act]." [1] Thus, in order for EPA to approve a revision to a State's SIP, especially one which weakens or eliminates an existing emission limitation, EPA must ensure that the revision will not interfere with attainment or maintenance of the NAAQS. EPA informed the State of this requirement in a March 16, 1993 letter during the public comment period for the State's repeal of Regulation No. 5.

II. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(l) of the Act provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA must also determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) of the Act and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA 6 months after receipt of the submission.

After providing more than 30 days of prior public notice, the State of Colorado held a public hearing on March 18, 1993 to entertain public comment on the repeal of Colorado Regulation No. 5. The State subsequently repealed the regulation from the Code of Colorado Regulations and, on May 6, 1993, the Governor submitted a request that Regulation No. 5 be removed from the federally-approved SIP. EPA received the submittal on May 11, 1993.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1992). The submittal was found to be administratively and technically complete, and a letter dated July 8, 1993 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. EPA then proceeded to review the submittal for technical adequacy.

2. Technical Adequacy Review

As noted, EPA had previously informed the State in a March 16, 1993 letter that EPA could not approve the removal of Regulation No. 5 from the SIP without insuring that its repeal would not interfere with attainment or maintenance of the NAAQS. The criteria pollutant (i.e., pollutant which is subject to the NAAQS) emitted from the Graves' alfalfa dehydration plant of significance is PM–10 (those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers). Currently, both La Porte and Fort Collins are designated unclassifiable for the attainment status of the PM–10 NAAQS. [2]

To address the section 110(l) noninterference requirement, the State presented PM–10 ambient air quality monitoring data for the Fort Collins and La Porte areas in its May 6, 1993 submittal. Specifically, the State submitted PM–10 monitoring data collected in Fort Collins during 1990 and in La Porte from May through December of 1992 which showed that the PM–10 values in the area are generally one-third of the NAAQS for PM–10. The State concluded that, because of these low values, the repeal of the emission limitations on the Graves' alfalfa dehydration plant would not interfere with attainment or maintenance of the PM–10 NAAQS.

EPA reviewed the information submitted by the State and determined that the monitoring data alone were insufficient to demonstrate that the repeal of the emission limits in Regulation No. 5 would not interfere with attainment or maintenance of the PM–10 NAAQS. Specifically, in an August 30, 1993 letter, EPA informed the State that these monitoring data were not adequate for the required demonstration because: (1) The data did not necessarily reflect the uncontrolled emissions from Graves' alfalfa dehydration plant (since Regulation No. 5 was still in effect at the time of the monitoring); and (2) EPA did not review or approve the La Porte PM–10 monitor as a site of maximum concentration. Consequently, EPA requested that the State submit a modeling analysis based on the potential, uncontrolled emissions from the Graves' alfalfa dehydration plant to demonstrate that the repeal of the Regulation No. 5 emission limits would not interfere with attainment or maintenance of the PM–10 NAAQS.

The State subsequently submitted the requested modeling demonstration on September 24, 1993. The State utilized conservative estimates for both the potential, uncontrolled PM–10 emissions from the Graves' alfalfa

[1] The Clean Air Act ("the Act") is codified in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] The provisions of section 193 of the Act which prohibit modification of certain control requirements in nonattainment areas without offsetting equivalent or greater emissions reductions are not applicable to this SIP revision.

dehydration plant, as well as the ambient PM–10 background concentration for the La Porte area, in an EPA-approved screening model. The model predicted a worst case cumulative 24-hour PM–10 concentration of 107 ug/m^3 and a worst case cumulative annual PM–10 concentration of 7.75 ug/m^3 in the La Porte area. EPA believes these values are sufficiently below the 24-hour PM–10 NAAQS of 150 ug/m^3 and the annual PM–10 NAAQS of 50 ug/m^3 to adequately demonstrate that the repeal of Regulation No. 5 will not interfere with attainment or maintenance of the PM–10 NAAQS. See the Technical Support Document (TSD) accompanying this notice for further details on the demonstration provided by the State.

III. Proposed Action

Based on the demonstration provided by the State on September 24, 1993 which showed that the repeal of Regulation No. 5 would not interfere with attainment or maintenance of the PM–10 NAAQS, EPA is proposing to approve the revision to the Colorado SIP submitted on May 6, 1993. The effect of this approval, if promulgated, will be to remove the provisions of Regulation No. 5 regarding existing alfalfa dehydrators from the federally-approved SIP. [3]

[3] Note that the new construction or modification of alfalfa dehydration plant drum facilities will continue to be regulated under the State's prevention of significant deterioration (PSD) and new source review (NSR) provisions, which are included in Colorado Regulation No. 3.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this document, EPA will consider any comments received by May 23, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This proposed Federal SIP-approval of a regulatory relaxation does not impose any new requirements. Accordingly, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 8, 1994.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 94–9666 Filed 4–20–94; 8.45 am]

BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 59, No. 77
Thursday, April 21, 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.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 15, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department of Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

- Farmers Home Administration

7 CFR 1945–D, Emergency Loan Policies, Procedures, and Authorizations
FmHA 1940–38, 1945–15, 1945–22
On occasion
State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 17,892 responses; 10,707 hours
Jack Holston, (202) 720–9736

Extension

- Forest Service

Application for the Senior Community Service Employment Program
FS–1800–21b
On occasion; Annually
Individuals or households; 6,500 responses; 1,083 hours
Katherine Allen, (703) 235–8855

- Agricultural Stabilization and Conservation Service

7 CFR Part 1435—Sugar, Subpart-Marketing Assessments
CCC–80
Monthly
Businesses or other for-profit; 756 responses; 1,134 hours
John Doster, (202) 305–1305

- Forest Service

The Mt. Baker-Snoqualmie Forest Visitor Study
On occasion
Individuals or households; 1,706 responses; 427 hours
Michael Yuan, (406) 243–2328

- Agricultural Stabilization and Conservation Service

7 CFR Part 12, 718, 720, 1404 Annual Certification Requirements (Part 12 and 718), Assignment of Payments (Part 1404), and Power of Attorney (Part 720)
AD–1026, 1026B, 1026C, 1026U/CCC–502U, 1068, 1069, 1026A Supplement; ASCS–578, 492, 211, 211–1; CCC–21, 36, 37, 251, 252
On occasion; Annually
Individuals or households; Farms; Small businesses or organizations; 5,747,538 responses; 2,024,723 hours
Lavonne Maas, (202) 720–8128

New Collection

- Food and Nutrition Service

Recipient Food Stamp Trafficking
One time only
Individuals or households; 936 hours; 1,044 responses
Sharon Cristofar, (703) 305–2115

- Rural Development Administration

7 CFR 4284–B, Rural Business Enterprise Grants and Television Demonstration Grants
Recordkeeping; On occasion; Monthly; Quarterly
State or local governments; Non-profit institutions; Small businesses or organizations; 7,030 responses; 13,695 hours
Jack Holston, (202) 720–9736

Larry K. Roberson,
Deputy Department Clearance Officer.
[FR Doc. 94–9592 Filed 4–20–94; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Proposed Crystal Creek Timber Sale Within the Council Mountain Roadless Area, Payette National Forest, Adams County, ID

AGENCY: Forest Service, USDA.
ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: A notice of intent to prepare an Environmental Impact Statement for the proposed Crystal Creek timber sale was published in the **Federal Register** January 24, 1994 (Vol. 59, Issue No. 15, Page 3554).

That notice is hereby revised to include the entire subwatershed north of the Middle Fork Weiser River in the analysis. The proposed timber sale area has been expanded west to the Payette National Forest boundary. This boundary adjustment will enable the interdisciplinary team assigned to this project to address cumulative effects better in the watershed.

The Forest Service will prepare an environmental impact statement for the proposed Crystal Creek Timber Sale, Council Ranger District, Payette National Forest, Idaho. The proposed sale would construct roads and harvest timber within a portion of the council Mountain Roadless area that the Payette National Forest Land and Resource Management Plan (1988) allocated to multiple use management.

The agency gives notice of the environmental analysis and decision-making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision. The agency has already completed a 30-day public comment period. The agency invited comments and suggestions on the scope of the analysis, including issues to be addressed during the analysis. An additional 30-day public comment period is being offered because of the expanded size of the project area.

A scoping meeting was held to gather comments from the public on the proposed action. The meeting was on Thursday, February 3, at 7 p.m. at the Council Ranger District office conference room in Council, Idaho. Forest Service officials explained the proposed action and planning process, and accepted public input. The

members of the public that attended this meeting felt that expanding the project area to include the entire subwatershed, was a good idea.

A scoping document explaining the revised proposed action and analysis process is also available from the contacts identified below.

DATES: Comments on the scope of the analysis should be received by May 13, 1994 to assure timely consideration.

ADDRESSES: Send written comments to Pete L. Johnston, District Ranger, Council Ranger District, Payette National Forest, P.O. Box 567, Council, ID 83629.

FOR FURTHER INFORMATION CONTACT: Pete Johnston, District Ranger, or Tracy Beck, EIS Team Leader, phone 208–253–4215.

SUPPLEMENTARY INFORMATION: The USDA Forest Service is proposing to construct 15.9 miles of road and harvest about 20.1 million board feet of timber from 1,835 acres of suitable timber lands within the Crystal Creek timber sale area. A mix of silvicultural treatments is proposed, including 231 acres of commercial thinning, 227 acres of shelterwood (about 35 percent crown canopy closure), 643 acres of reserve tree (about 5–10 trees per acre), and 734 acres of sanitation/salvage. This mix of silvicultural prescriptions seeks to retain suitable habitat for sensitive species within all treatment units where it currently exists, improve forest health (resilience and resistance to insects and disease), and increase dominance of seral ponderosa pine and Douglas-fir.

Helicopter logging is proposed for 488 acres (27 percent of the treatment acreage), skyline logging is proposed for 812 acres (44 percent of the treatment acreage), and tractor logging is proposed for 535 acres (29 percent of the treatment acreage). The proposed mix of logging systems seeks to protect leave stands and regenerate stands in a cost efficient and cost effective manner.

This sale lies within the Council Mountain roadless Area, Adams County, Idaho. Crystal Creek, Lake Creek, Cabin Creek, Boulder Creek, Bar Creek, Warm Spring Creek, and Sheep Creek are drainages within the proposed timber sale area and are all tributaries of the Middle Fork Weiser River.

The proposal follows direction in the Payette National Forest Land and Resource Management Plan, 1988 (Forest Plan). The decision to be made is whether the sale area should be entered at this time for timber harvest and associated activities, and if so, the specific conditions of entry.

Preliminary issues include the proposal's effect on roadless characteristics, vegetation, water quality, biological diversity, fisheries, soils, wildlife habitat, and economics.

Preliminary alternatives being considered include no action, an alternative that seeks to achieve Forest Plan objectives to maximize timber growth and yield, and the proposed action alternative that modifies timber management intensity in response to the preliminary issues.

A draft environmental impact statement (DEIS) considering the proposed action and a reasonable range of alternatives will be prepared. The DEIS is expected to be filed with the Environmental Protection Agency and to be available for public review by March 1995. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.**

At this early stage, the Forest Service believes it is important to give reviewers early notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of that proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Circut, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final environmental impact statement is scheduled to be completed by July, 1995.

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest, McCall, ID 83638.

Dated: April 13, 1994.

David F. Alexander,

Forest Supervisor.

[FR Doc. 94–9639 Filed 4–20–94; 8:45 am]

BILLING CODE 3410–31–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committee: Availability of Report on Closed Meetings

AGENCY: Department of Commerce.

ACTION: Announcing public availability of report on closed meetings of advisory committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially closed meetings of advisory committees are required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, room LM133, Madison Building, 1st and Independence Avenues SE., Washington, DC 20540.

Department of Commerce, Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230, Telephone (202) 482–0585.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially closed meetings held in 1993 of 36 committees and two subcommittees, the names of which are listed below:

Board of Overseers of the Malcolm Baldrige National Quality Award.

Committee of Chairs of Industry Advisory Committees for Trade Policy Matters (TPM).

Computer Systems Technical Advisory Committee.

Electronic Technical Advisory Committee.

Industry Sector Advisory Committee (ISAC) on Aerospace Equipment for Trade Policy Matters (TPM).

ISAC on Building Products and Other Materials for TPM.

ISAC on Capital Goods for TPM.

ISAC on Chemicals and Allied Products for TPM.

ISAC on Consumer Goods for TPM.
ISAC on Electronics and Instrumentation for TPM.
ISAC on Energy for TPM.
ISAC on Ferrous Ores and Metals for TPM.
ISAC on Footwear, Leather, and Leather Products for TPM.
ISAC on Lumber and Wood Products for TPM.
ISAC on Nonferrous Ores and Metals for TPM.
ISAC on Paper and Paper Products for TPM.
ISAC on Services for TPM.
ISAC on Small and Minority Business for TPM.
ISAC on Textiles and Apparel for TPM.
ISAC on Transportation, Construction, and Agricultural Equipment for TPM.
ISAC on Wholesaling and Retailing for TPM.
Industry Functional Advisory Committee on Customs Matters for TPM.
—Subcommittee on Rules of Origin of the Industry Functional Advisory Committee on Customs Matters for TPM.
Industry Functional Advisory Committee on Intellectual Property Rights for TPM.
Industry Functional Advisory Committee on Standards for TPM.
Industry Policy Advisory Committee for Trade Policy Matters.
Judges Panel of the Malcolm Baldrige National Quality Award.
Materials Technical Advisory Committee.
Materials Processing Equipment Technical Advisory Committee.
National Medal of Technology Nomination Evaluation Committee.
National Technical Information Service Advisory Board.
Regulation and Procedures Technical Advisory Committee.
Sensors Technical Advisory Committee.
Subcommittee on Export Administration, President's Export Council.
Telecommunications Equipment Technical Advisory Committee.
Transportation and Related Equipment Technical Advisory Committee.
U.S. Automotive Parts Advisory Committee.
Visiting Committee on Advanced Technology.

FOR FURTHER INFORMATION CONTACT: Victoria A. Kruk, Management Analyst, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 482–0585.

Dated: April 13, 1994.

Victoria A. Kruk,

Office of Management Support, Officer of Federal Assistance and Management Support.

[FR Doc. 94–9650 4–20–94; 8:45 am]

BILLING CODE 3510–FA–M

International Trade Administration

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On March 16, 1994 the Canadian Horticultural Council filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free-Trade Agreement. Panel review was requested of the final affirmative injury determination made by the Canadian International Trade Tribunal respecting Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples, Excluding Delicious, Red Delicious and Golden Delicious Apples Imported in Non-Standard Containers for Processing. This determination was published in the Canada Gazette on February 19, 1994. The NAFTA Secretariat has assigned Case Number CDA–94–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994.

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on March 16, 1994, requesting panel review of the final injury determination described above.

Rule 39(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is April 15, 1994);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 2, 1994); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 94–9653 Filed 4–20–94; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of panel review of the final affirmative injury determination made by the U.S. International Trade Commission, respecting pure and alloy magnesium from Canada, secretariat file No. USA–92–1904–05/06.

SUMMARY: Pursuant to the Memorandum Opinion and Order of the Binational Panel dated January 27, 1994, the Panel Review of the final determination described above was completed on March 1, 1994.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On August 27, 1993, the Binational Panel remanded the final determinations to the U.S. International Trade Commission for a detailed explanation on certain aspects of the determination. The Commission filed a determination on remand on October 27, 1993. The Binational Panel affirmed the Commission's determination on remand in all respects on January 27, 1994. The Secretariat is required to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the decision

that affirms the final determination, if no Request for a Extraordinary Challenge is filed. No such request was filed. Therefore, on the basis of Rule 80 of the Article 1904 Panel Rules, the Panel Review was completed and the panelists were discharged from their duties effective March 1, 1994.

Dated: March 16, 1994.

James R. Holbein,

United States Secretary NAFTA Secretariat.

[FR Doc. 94–9685 Filed 4–20–94; 8:45 am]

BILLING CODE 3510–GT–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 94–028. *Applicant:* Carnegie Mellon University, Department of Software Engineering, 4500 Fifth Avenue, Pittsburgh, PA 15213. *Instrument:* Real Time Experimental Equipment Package. *Manufacturer:* Quanser Consulting, Canada. *Intended Use:* The instrument will be used in an experiment to test the theory of software fault tolerance in automatic controls. *Application Accepted by Commissioner of Customs:* February 28, 1994.

Docket Number: 94–030. *Applicant:* Clemson University, Electrical and Computer Engineering Department, 105 Riggs Hall, Clemson, SC 29634-0915. *Instrument:* Experimental Laboratory Equipment. *Manufacturer:* Quanser Consulting, Canada. *Intended Use:* The instrument will be used for educational purposes in the course ECE 495, Integrated Systems which will cover the design and implementation of linear, analog and digital classical control systems. The objective of the course is to provide junior and senior level students with the practical experience necessary to successfully analyze and integrate various components into a working, controlled mechanical system. *Application Accepted by Commissioner of Customs:* February 28, 1994.

Docket Number: 94–043. *Applicant:* Georgetown University, 37th & O Streets, NW, Washington, DC 20057. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used by faculty and students in the department of biology in pursuit of knowledge regarding the structure and function of cells within tissues obtained from plants and animals across the spectrum of living organisms, including humans. In addition, the instrument will be used for instruction, including student research as part of the education of undergraduate science students at the university. *Application Accepted by Commissioner of Customs:* April 7, 1994.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–9686 Filed 4–20–94; 8:45 am]

BILLING CODE 3510–DS–F

National Institute of Standards and Technology, et al; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 93–121. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Electron Microscope, Model JEM-3010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 58 FR 55043, October 25, 1993. *Order Date:* February 28, 1993.

Docket Number: 93–139. *Applicant:* U.S. Department of Agriculture, Agricultural Research Service, Southern Regional Research Center, New Orleans, LA 70179. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 58 FR 65157, December 13, 1993. *Order Date:* July 22, 1993.

Docket Number: 93–142. *Applicant:* Veterans Affairs Medical Center, Lexington, KY 40511-1093. *Instrument:* Electron Microscope, Model CM10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 58 FR 65157, December 13, 1993. *Order Date:* September 30, 1993.

Docket Number: 93–147. *Applicant:* Department of Veterans Affairs, Northport, NY 11768. *Instrument:* Electron Microscope, Model JEM 1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 58 FR 68876, December 29, 1993. *Order Date:* September 20, 1993.

Docket Number: 93–157. *Applicant:* The Ohio State University, Columbus, OH 43210. *Instrument:* Electron Microscope, Model CM200 FEG. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 59 FR 6621, February 11, 1994. *Order Date:* November 13, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–9687 Filed 4–20–94; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Intent to Conduct a Public Meeting on The Preparation of a Draft Environmental Impact Statement for The Proposed San Francisco Bay National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting and intent to prepare a draft environmental impact statement.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972, as amended, the State of California and the National Oceanic and Atmospheric Administration (NOAA)

intend to conduct a public meeting to present a preliminary draft management plan outline for the proposed San Francisco Bay National Estuarine Research Reserve (SFBNERR) and to discuss significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS). The DEIS and draft management plan will address research, monitoring, education and resource protection needs for the reserve.

In December 1993, NOAA approved the nomination of a proposed multi-component reserve, consisting of six salt and tidal brackish marshes in the San Francisco Bay estuary of California.

The proposed SFBNERR consists of the following components:

South Bay Component: Bair Island Ecological Reserve;
Central Bay Component: Corte Madera Marsh Ecological Reserve;
San Pablo Bay Component: China Camp State Park;
Petaluma River Component: Petaluma Marsh Wildlife Area;
Suisun March Component: Rush Ranch, Peytonia Ecological Reserve, and Hill Slough Wildlife Area; and
Delta Component: Browns Island.

The SFBNERR is proposed to be managed by the San Francisco State University. The University is currently home to a number of internationally-known scholars in the fields of aquatic and conservation biology, geochemistry and geographic information systems. The University also operates the Romberg Tiburon Center for Environmental Studies, a field center for research on San Francisco Bay and its environs.

Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance basic scientific understanding of coastal environments and aid in resource management decision making.

SFSU has developed a preliminary draft management plan outline for the proposed reserve system. The draft outline identifies specific needs and priorities related to research, monitoring, education, and resource protection at the approved sites. It also outlines an administration plan as well as volunteer programs, public access, visitor use, and facilities development needs.

At the public meetings, SFSU and NOAA will provide a synopsis of the processes for developing a draft management plan and will solicit comments on significant environmental issues which will be incorporated into a Draft Environmental Impact Statement.

The public meetings will be held at the following locations:

Monday, May 16, 1994—7:30 p.m. at the City of Novato Community House, Machin Street at Delong Avenue, in Novato, California.
Tuesday, May 17, 1994—7:30 p.m. at the City of Fairfield Community Center, 1000 Kentucky Street, Studio A, in Fairfield, California.
Thursday, May 19, 1994—7:30 p.m. at the City of Palo Alto Baylands Nature Interpretive Center, 2775 Embarcadero Road, in Palo Alto, California.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of this DEIS are invited to attend. Parties who wish to respond in writing should do so by June 3, 1994.

Comments may be submitted in writing to Ms. Cheryl A. Graham, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 12th Floor, Silver Spring, Maryland 20910, (301) 713–3132.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl A. Graham, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 12th Floor, Silver Spring, Maryland 20910, (301) 713–3132.

Federal Domestic Assistance Catalog Number 11.420
(Coastal Zone Management) Estuarine Research Reserves

Dated: April 18, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–9598 Filed 4–20–94; 8:45 am]

BILLING CODE 3510–08–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Flammability Standards for Clothing Textiles and Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 USC Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through April 30, 1997, of information collection requirements in regulations implementing the flammability standards for clothing textiles and vinyl plastic film. These regulations are codified at 16 CFR parts 1610 and 1611, and prescribe requirements for testing and recordkeeping by persons and firms issuing guarantees for products subject to the Standard for the Flammability of Clothing Textiles, and the Standard for the Flammability of Vinyl Plastic Film.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Clothing Textiles (16 CFR part 1610); Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611).

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of goods manufactured or imported.

General description of respondents: Manufacturers and importers of fabrics and film used in wearing apparel, and manufacturers and importers of garments other than children's sleepwear.

Estimated number of respondents: 1,000.

Estimated average number of hours per respondent: 101.6 year.

Estimated number of hours for all respondents: 101,600 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416.

This is not a proposal to which 44 USC 3504(h) is applicable.

Dated: April 18, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–9691 Filed 4–20–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Draft Programmatic Environmental Impact Statement (DPEIS) for the Ballistic Missile Defense (BMD) Program

AGENCY: Ballistic Missile Defense Organization (BMDO), Defense.

ACTION: Notice of availability.

SUMMARY: The Preferred Action is to continue to conduct a Technology Readiness Program for National Missile Defense (NMD). The objective of the Program is to research and develop long-lead time sensor; interceptor; and battle management/command, control, and communications technologies to provide improvements to existing missile defense capabilities. Under the Program, concepts for NMD contingency deployment will also be enhanced. The Preferred Action is also the No-Action Alternative as it is a continuation of current BMDO policy.

The Theater Missile Defense (TMD) Program will continue under the Preferred Action and all alternatives. A Record of Decision (ROD) to conduct research and development activities that would give the United States the capability to produce and deploy a TMD system was published in the Federal Register on April 15, 1994. These activities will proceed regardless of the decision to be made on the Ballistic Missile Defense PEIS.

The DPEIS analyzes the potential environmental effects associated with three System Acquisition Alternatives for the continued research and development of a Ballistic Missile Defense (BMD) system capability by the Department of Defense (DoD). The environmental impacts of the Preferred Action and alternatives are discussed in the DPEIS to support future decisions on whether and how the DoD will proceed with a BMD system.

LEAD AGENCY: Ballistic Missile Defense Organization (BMDO).

COOPERATING AGENCIES: Department of Energy, National Aeronautical and Space Administration, U.S. Air Force, U.S. Army, U.S. Navy.

Alternatives to the Proposed Action Analyzed in the DPEIS

- *Ground- and Space-Based Sensors and Ground- and Space-Based Interceptors System Acquisition Alternative.* Under this alternative, BMDO would proceed with research, development, and testing activities similar to the Preferred Action but at a more intense level of effort. This alternative would also allow for the acquisition of a Ground- and Space-Based NMD system to proceed to the development of a system capability.

- *All Ground-Based System Acquisition Alternative.* Under this alternative, BMDO would proceed with research, development, and testing activities similar to the Preferred Action but at a more intense level of effort. This alternative would allow for the acquisition of an All Ground-Based NMD system to proceed to the development of a system capability.

- *Ground- and Space-Based Sensors and Ground-Based Interceptors System Acquisition Alternative.* Under this alternative, BMDO would proceed with research, development, and testing activities similar to the Preferred Action but at a more intense level of effort. This alternative would allow for the acquisition of a Ground- and Space-Based NMD system (without Space-Based Interceptors) to proceed to the development of a system capability.

Invitation To Provide Comments

BMDO will sponsor two public hearings to provide the public an opportunity to present their comments on the DPEIS. The first public hearing will be held at 7 p.m. on May 10, 1994, at The University of California—Santa Barbara, Santa Barbara, California. The second public hearing will be held at 7 p.m. on May 12, 1994, at The National Guard Association of the United States "Walsh-Reckord Hall of States" Washington, DC. Translators and signers will be provided upon request by calling the toll-free number listed below. Additionally, comments may be provided through any or all of the following means:

(1) Written comments and questions concerning the DPEIS may be forwarded to: Major Tracy Bailey, BMDO/AQT, 7100 Defense Pentagon, Washington, DC, 20301–7100. All written comments on the PDEIS must be postmarked by May 31, 1994.

(2) Written comments and questions may also be telecopied by calling toll-free (800) 636–BMDO (800–636–2636).

(3) Verbal comments will be recorded by calling toll-free (800) 636–BMDO (800–636–2636) from April 15 through May 31, 1994.

(4) For the hearing impaired, the toll-free number to comment is (800) 653–2150.

(5) Copies of the DPEIS or Executive Summary may be requested by calling the above toll-free number.

Dated: April 15, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–9577 Filed 4–20–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP)

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP) will meet in closed session on May 3, and May 10–11, 1994 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide recommendations for implementing a Joint Advanced Strike Technology Program in the FY 95–05 period.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: April 15, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–9578 Filed 4–20–94; 8:45 am]

BILLING CODE 5000–04–M

Telecommunications Service Priority (TSP) System Oversight Committee

AGENCY: National Communications System, Defense.

ACTION: Notice of meeting.

A meeting of the telecommunications Service Priority (TSP) System Oversight Committee will convene Thursday, May 19, 1994, from 9 a.m. to 4:30 p.m. The meeting will be held at the National Communications System (NCS) National Coordinating Center, 701 South Court House Road, Arlington, VA 22204–2189.

The agenda is as follows:

—Opening/Administrative Remarks.
—Review November 10, 1993 Meeting Summary and Status of Actions.
—TSP Program Office Update.

—TSP Ad Hoc Working Group Report.
—Revies of Action Items.
—Old Business/New Business.

Anyone interested in attending or presenting additional information to the Committee, please contact the NCS TSP Program Office, Bernard Farrell (703) 746–5375 or Susan Fling (703) 692–0040, by May 13, 1994.

Dated: April 14, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–9579 Filed 4–20–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Availability for Lower Snake River Biological Drawdown Test Draft Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers and National Marine Fisheries Service, DOD.

ACTION: Notice of availability.

SUMMARY: This Draft Environmental Impact Statement (DEIS) was prepared in response to a need for data which measures the effects on increased water velocity on juvenile salmonid survival and travel time, and also for data measuring the effects of reservoir drawdown on upstream passage and survival of adult salmon, resident fish wildlife, bottom-dwelling organisms, and water quality. This document describes different alternatives for a proposed drawdown test of the Lower Snake River Reservoirs to improve conditions for smolts during their migration to the ocean.

The comment period for this document will begin April 29, 1994 and will run through June 13, 1994. In order to meet the expedited implementation schedules of the alternatives, comments must be received by June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Questions on this DEIS or requests for copies of this document should be addressed to Mr. Pete Poolman at 509/522–6619 or Mr. Chris Hyland at 509/522–6927: Corps of Engineers, Planning Division, ATTN: CENPW–PL–ER, Walla Walla, WA 99362–9265.

SUPPLEMENTARY INFORMATION:

Proposed Action

The preferred alternative is option 3A, a two month drawdown of Lower Granite Reservoir in the spring of 1996. The test could be done for only one migration season or could be repeated for up to four years.

Alternatives

Alternative #1:—*No Action:* No Action alternative would involve the continued operation of the Lower Granite project under existing water management plans. Lower Granite reservoir is operated within one foot above Minimum Operating Pool, or elevation 733 feet, during the juvenile salmon migration period (April through the end of July), as prescribed in the Biological Opinion for operation of the Federal Columbia River Power System from 1994 through 1998. Prescription for juvenile collection/bypass, spill, and powerhouse operation would also be as in the Biological Opinion.

Alternative #2:—*Lower Granite Drawdown Test with Dipnets or Gatewell Baskets:* Under this alternative, Lower Granite Reservoir would be drafted to elevation 710 or 690 feet during the test period. Discharges from Lower Granite Dam would be managed to maximize spill. Fish guided to the gatewell slots at the dam would be removed with sanctuary dipnets or gatewell baskets, which could be constructed relatively quickly. Therefore this test could be implemented as soon as 1995. If the drawdown test were initiated in 1995, the drawdown elevation would be 710 feet because the adult fish ladder exit modifications would not be completed until the winter of 1995–1996. In 1996 or subsequent years, this alternative would be implemented with a drawn to elevation 690 feet. The joint-lead agencies have identified two options for Alternative 2:

(1) Option 2A: Spring 1995 Test (April 10 through June 20).

(2) Option 2B: Summer 1995 Test (July 1 through August 31).

Alternative #3 *Lower Granite Drawdown Test with New Gatewell Tank System:* Under Alternative 3, Lower Granite Reservoir would be drafted to elevation 690 feet for a specified period. Juvenile fish would be removed from the gatewells with a system of new tanks that would fit within the existing gatewell structure. Alternative 3 would be implemented in 1996 because the gatewell tank system and the adult fish ladder would not be completed until the winter of 1995–1996 period for inriver work. This alternative would allow for collection of baseline data in 1994 and 1995. Alternative 3 has four options that differ with respect to seasonal timing and spillway/powerhouse operation:

(1) Option 3A: Spring 1996 Test, Maximize Powerhouse Operation.

(2) Option 3B: Spring 1996 Test, Maximize Spill.

(3) Option 3C: Spring-Summer 1996 Test, Maximize Powerhouse Operation.

(4) Option 3D: Spring-Summer 1996 Test, Maximize Spill. Alternative #4 *Lower Granite Drawdown Test with New Low-Level Bypass System:* The primary feature of this alternative is construction of new low-level bypass system in the Lower Granite Powerhouse, to allow operation of the juvenile fish bypass system under drawdown conditions. Construction of the new system would occur in 1995 and 1996, so testing would begin in 1997. Alternative 4 has four options, all of which involve a drawdown to 690 feet:

(1) Option 4A: Spring 1997 Test, Maximize Powerhouse Operation.

(2) Option 4B: Spring 1997 Test, Maximize Spill.

(3) Option 4C: Spring-Summer 1997 Test, Maximize Powerhouse Operation.

(4) Option 4D: Spring-Summer Test, Maximize Spill.

Public Meetings

Public hearings/workshops will be held at the following four locations in the region. These meetings will be held in connection with the System Configuration Study (SCS) public meetings. The reason for this is twofold: (1) To limit the number of meetings held in the region, and more importantly, (2) these two subjects are very closely related. One of the long-term structural alternatives to improving salmon migrating conditions being evaluated under the SCS is annual drawdowns of the Lower Snake River reservoirs. All meetings will begin at 6 p.m. The dates and locations for these meetings are as follows:

Monday, May 16, 1994, Red Lion Downtowner, 1800 Fairview Boise, ID.

Tuesday, May 17, 1994, Ramada Inn, 621 21st Street, Lewiston, ID.

Wednesday, May 18, 1994, Cavanaugh's Inn, 1101 N. Columbia Center Blvd., Kennewick, WA.

Thursday, May 19, 1994, Red Lion Lloyd Center, 100 NE Multnomah, Portland, OR.

Availability

The DEIS will be available for distribution to the public on April 29, 1994.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 94–9601 Filed 4–20–94; 8:45 am]

BILLING CODE 3710–08–M

Advisory Committee Notice

AGENCY: Headquarters, I Corps and Fort Lewis, DOD.

ACTION: Meeting notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of the Committee: Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

Date of the Meeting: May 12, 1994

Place: Yakima Training Center, Building 266, Yakima, Washington

Time: 1 p.m.

Proposed Agenda: Cultural and Natural Resources Management Plan Development and Review

All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Stephen Hart, Chief, Civil Law, (206) 967–4540.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–9657 Filed 4–20–94; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, April 27, 1994. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in Rooms 125 and 126 of the meeting facilities at Penn State Great Valley, 30 E. Swedesford Road, Malvern, Pennsylvania.

An informal conference among the Commissioners and staff will be open for public observation at 10 a.m. at the same location and will include briefings on the Delaware Estuary Toxics Management Program and the Commission's Water Conservation Advisory Committee.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Hickory Water Company D–87–31 CP Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 14.5 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1 through 5. Commission approval on September 28, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 10.58 mg/30 days to 14.5 mg/30 days. The project is located in Delaware Township, Pike County, Pennsylvania.

2. *Star Enterprise D–88–25 Renewal.* An application for the renewal of a ground water withdrawal of up to 6.48 mg/30 days of water from the applicant's ground water decontamination system from Well Nos. C–6, C–7, C–10 and C–29R. Commission approval on May 25, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 6.48 mg/30 days. The project is located in New Castle County, Delaware.

3. *Upper Deerfield Township D–93–16 CP.* An application for approval of a ground water withdrawal project to supply up to 19.8 mg/30 days of water to the applicant's distribution system from new Well No. 3 and proposed Well No. 4, and to limit the withdrawal from all wells to 19.8 mg/30 days. The project is located in Upper Deerfield Township, Cumberland County, New Jersey.

4. *Pennsgrove Water Supply Company, Bridgeport Division D–93–28 CP.* An application for approval of a ground water withdrawal project to supply up to 7.5 mg/30 days of water to the applicant's distribution system from existing Well Nos. 2 and 3, and to limit the withdrawal from all wells to 7.5 mg/30 days. The project is located in Logan Township, Gloucester County, New Jersey.

5. *Enserv Inc. D–93–54.* A proposal to provide a new sewage treatment plant (STP) to replace two existing STPs; one serving Immaculata College and permitted at 0.072 million gallons per day (mgd), and the other serving Camilla Hall and permitted for 0.026 mgd. The new secondary level STP will be operated at 0.098 mgd and handle the combined wastewater flow of the existing plants. The proposed STP will be located adjacent to the existing Camilla Hall STP just off Frazer Road and will discharge to an unnamed tributary of Valley Creek, in East Whiteland Township, Chester County, Pennsylvania.

6. *Blue Bell Country Club D–93–59.* An application for approval of a ground and surface water withdrawal project to supply up to 0.068 mgd of water to the applicant's golf course irrigation system from new Well No. 5 and to decrease the existing withdrawal limit from all sources from 14.3 mg/30 days to 6.1 mg/30 days. The project is located in Whitpain Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

7. *UTI Corporation D–93–61(D) & D–93–61(G).* A ground water remediation project consisting of the proposed withdrawal and treatment of up to 0.216 mgd of ground water at the applicant's metal tube facility located in Trappe Borough, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area. Ten on-site wells are described in Docket No. D–93–61(G) and the treatment discharge system is described in Docket No. D–93–61(D). The ground water will be treated via an existing air stripper, after minor modifications, for removal of volatile organic compounds. The discharge will be to a drainage swale flowing to an unnamed tributary of Perkiomen Creek.

8. *Mercer County Improvement Authority D–93–65 CP.* An electric generation project that will provide electrical power through disposal of municipal waste by incineration. A steam turbine will generate up to 52 megawatts of electricity for in-house use and for sale to Public Service Electric and Gas Company. Water will be provided by the City of Trenton. A new consumptive use of approximately 140,000 gpd, on average, is expected by the applicant. No new direct industrial wastewater discharge is proposed. The project waste disposal facilities will serve Mercer and Atlantic Counties. The project will be located on Duck Island adjacent to the Delaware River in Hamilton Township, Mercer County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: April 12, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–9642 Filed 4–20–94; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.040]

Invitation for Fiscal Year 1994 Applications Under the School Construction in Areas Affected by Federal Activities Program for Fiscal Year 1995 Funds

PURPOSE OF PROGRAM: To help compensate school districts for the cost

of educating children when enrollment and the availability of revenues from local sources have been adversely affected by Federal activities, the Secretary provides direct grants for the construction or remodeling of urgently needed minimum school facilities. Section 5 of Public Law 81–815 authorizes assistance for school construction in local educational agencies due to Federal activity carried out either directly or through a contractor. Eligibility is determined by the increase in the number of children residing on Federal property or with a parent employed on Federal property. Section 14 authorizes assistance for certain school districts that serve children residing on Indian lands, or that are significantly burdened by the presence of nontaxable Federal property and have a substantial number of inadequately housed pupils.

Notice is given that the Secretary of Education has established a closing date for the transmittal of applications for assistance under section 5 of Public Law 81–815, based on increase periods ending June 1994 or June 1995 and for requests for assistance under section 14 of Public Law 81–815.

Funding for this program is subject to the availability of appropriations. Appropriations in the past several years have been sufficient to fund only the three or four higher priority applications in a given year. There continues to be approximately 200 eligible but unfunded applications for school construction assistance under Public Law 81–815. Only those new applications that demonstrate an urgent need for minimum school facilities, primarily elementary or secondary education classrooms, will qualify for funding consideration in fiscal year 1995.

Please note that this application invitation is based on the current law, which expires on September 30, 1994. We will not know before the June 30 application deadline how the program statute may be changed through reauthorization by Congress.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: June 30, 1994.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: September 1, 1994.

AVAILABLE FUNDS: For fiscal year 1994, $3,571,000 was appropriated for sections 5 and 14(c), and $3,770,000 was appropriated for sections 14(a) and 14(b). The level of funding for fiscal year 1995 is contingent upon Congressional action to be taken later this year.

APPLICATIONS AVAILABLE: Application forms may be obtained from the State educational agency that serves the applicant local educational agency.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 82, 85 and 86; and (b) the regulations for this program in 34 CFR part 221.

FOR FURTHER INFORMATION CONTACT: School Facilities Branch, Impact Aid Program, Program Operations Division, U.S. Department of Education, 400 Maryland Avenue, SW., Portals Building, room 4200, Washington, DC 20202–6244. Telephone: (202) 260–3977. Hand-delivered applications will be accepted at 1250 Maryland Avenue, SW., room 4200, between 8 a.m. and 4 p.m. (Washington, DC, time) daily except Saturdays, Sundays, and Federal holidays. 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.

Program Authority: 29 U.S.C. 631–645.

Dated: April 18, 1994.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance No. 84.040 School Assistance in Federally Affected Areas—Construction)

[FR Doc. 94–9659 Filed 4–20–94; 8:45 am]

BILLING CODE 4000–01–P

Historically Black Colleges and Universities Capital Financing Advisory Board; Meeting

April 18, 1994.

AGENCY: Historically Black Colleges and Universities Capital Financing Advisory Board, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of a meeting of the Historically Black Colleges and Universities Capital Financing Advisory Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATES AND TIMES: May 3, 1994; 9 a.m. until 5 p.m.

LOCATION: Ramada Plaza, 10 Thomas Circle, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Executive Director, HBCU Capital Financing Advisory Board, U.S. Department of Education, 400 Maryland Avenue SW., room 3915, ROB–3 Washington, DC 20202–5151. Telephone: (202) 708–5656.

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Capital Financing Advisory Board is established under section 727 of the Higher Education Act as amended by Public Law 102–325 (20 U.S.C. 1132–6). The Advisory Board is established within the Department of Education to provide advice and counsel to the Secretary and the designated bonding authority as to the most effective and efficient means of implementing construction financing on historically Black college and university campuses and to advise Congress regarding the progress made in implementing the program. Specifically, the Advisory Board will provide advice as to the capital needs of historically Black colleges and universities, how those needs can be met through the program, and what additional steps might be taken to improve the operation and implementation of the construction financing program.

The meeting on May 3, 1994, is open to the public. The Advisory Board will review information concerning the activities of the designated bonding authority; the selection criteria for choosing the designated bonding authority; credit criteria; the operation of the escrow account; and various issues concerning the operation and implementation of the construction financing program.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 3915, ROB–3) Washington, DC between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–9633 Filed 4–20–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–339–000, et al.]

Midwestern Gas Transmission Company, et al.; Natural Gas Certificate Filings

April 13, 1994.

Take notice that the following filings have been made with the Commission:

1. Midwestern Gas Transmission Company and Tenneco Midwest Natural Gas L.P.

[Docket No. CP94–339–000]

Take notice that on April 7, 1994, Midwestern Gas Transmission Company (Midwestern) and Tenneco Midwest Natural Gas L. P. (Tenneco Midwest), jointly referred to as applicants, both of which are located at 1010 Milam Street, P.O. Box 2511, Houston, Texas, 77252–2511, filed in Docket No. CP94–339–000 a joint application pursuant to sections 7(b) and 7(c) of the Natural Gas Act. Applicants request that the Commission issue an order permitting Midwestern to abandon its services and facilities subject to the jurisdiction of the Commission and grant a certificate of public convenience and necessity authorizing the acquisition and operation by Tenneco Midwest of the facilities and service obligations of Midwestern as an interstate pipeline, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The application does not propose any changes to the present facilities or service obligations currently provided by Midwestern.

Comment date: May 4, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Granite State Gas Transmission, Inc.

[Docket No. CP87–39–002]

Take notice that on April 4, 1994, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed an application with the Commission, pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, to amend the limited-term certificate issued in Docket Nos. CP87–39–000, *et al.* on August 4, 1987, (40 FERC ¶61,165) which authorized, among other things, the lease and conversion to natural gas use of the Portland Pipe Line Corporation (Portland Pipe Line) oil pipeline and its operation in natural gas service until March 31, 1996. Granite State requests in this application an extension of the limited-term certificate to operate the converted 18-inch pipeline in natural gas service for an additional year, from March 31, 1996, to March 31, 1997, with pre-granted abandonment as of March 31, 1997, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Granite State states that in October 1993 Portland Pipe Line gave timely notification of the termination of the lease on March 31, 1996, and that Portland Pipe Line and Granite State negotiated a one-year extension of the lease until March 31, 1997. Granite State states that no new construction and no new or enlarged services are proposed in connection with this request.

Granite State further states that the order issued in Docket Nos. CP87–39–000, *et al.* also granted a Petition for a Declaratory Order filed by Portland Pipe Line in Docket No. CP87–70–000 in which the Commission declared that the lease of the 18-inch line would not make Portland Pipe Line a jurisdictional natural gas company and that the revenues received under the lease would be excluded in determining Portland Pipe Line's rates for oil transportation services. Granite State states that the one-year amendment to the lease does not change Portland Pipe Line's status as determined in the Declaratory Order. Granite State also requests that the Commission confirm that the amended lease between Granite State and Portland Pipe Line will not convert Portland Pipe Line into a jurisdictional natural gas company and that the revenues received by Portland Pipe Line under the amended lease will not be considered in establishing Portland Pipe Line's rates for the transportation of oil.

Comment date: May 4, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP94–345–000]

Take notice that on April 11, 1994, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed a request with the Commission in Docket No. CP94–345–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to convert an existing receipt point and meter station to a delivery point for Mississippi Valley Gas Company (MVG) in Monroe County, Mississippi, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Texas Eastern proposes to convert an existing 2-inch tap receipt point and meter station to a delivery point for MVG in Monroe County. Texas Eastern would deliver MVG's gas at the proposed delivery point under Texas Eastern's FERC Rate Schedule IT–1. Texas Eastern states that MVG intends to use this delivery point for supplemental storage fill only at its Goodwin natural gas field. Texas Eastern states that it would reverse the check valve at no cost to MVG. Texas Eastern also states that it would own, operate, and maintain the tap, while MVG would own, operate, and maintain the meter station.

Texas Eastern states that the proposed delivery point would have no effect on its current peak day or annual deliveries, nor would the proposed installation of the delivery point would have a negative impact on Texas Eastern's existing customers.

Comment date: May 31, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. ANR Pipeline Company

[Docket No. CP94–347–000]

Take notice that on April 11, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–347–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate two interconnections between ANR and Wisconsin Public Service Corporation (WPS), an existing customer, at Manitowoc County and Oconto County, Wisconsin, under the blanket certificate issued in Docket No. CP82–480, 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.

ANR asserts that the proposed facilities will permit WPS to provide new residential gas service to the communities in and approximate to the Town of Meeme, in Manitowoc County, Wisconsin and the Village of Crivitz in Oconto County, Wisconsin. ANR states that it will provide WPS with firm service at the proposed interconnections through a combination of restructured services, under Rate Schedule ETS (Enhanced Transportation Service), Rate Schedule FSS (Firm Storage Service), and Rate Schedule NNS (No-Notice Service). ANR asserts that the maximum daily quantity of gas to be delivered through these facilities is approximately 670 Dth/d at the Meeme Interconnection and 1,500 Dth/d at the Crivitz Interconnection.

ANR estimates that the proposed Meeme and Crivitz Interconnections will consist of metering and appurtenant facilities and will cost approximately $121,500 and $123,500 respectively.

ANR claims that no significant impact on its system peak day deliveries or its annual entitlements is projected to

result from the construction of the proposed interconnections.

Comment date: May 31, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. East Tennessee Natural Gas Company and Tenneco East Natural Gas L.P.

[Docket No. CP94–340–000]

Take notice that on April 7, 1994, East Tennessee Natural Gas Company (East Tennessee) and Tenneco East Natural Gas L. P. (Tenneco East), jointly referred to as applicants, both of which are located at 1010 Milam Street, P.O. Box 2511, Houston, Texas, 77252–2511, filed in Docket No. CP94–340–000 a joint application pursuant to sections 7(b) and 7(c) of the Natural Gas Act. Applicants request that the Commission issue an order permitting East Tennessee to abandon its services and facilities subject to the jurisdiction of the Commission and grant a certificate of public convenience and necessity authorizing the acquisition and operation by Tenneco East of the facilities and service obligations of East Tennessee as an interstate pipeline, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The application does not propose any changes to the present facilities or service obligations currently provided by East Tennessee.

Comment date: May 4, 1994, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America Transwestern Pipeline Company

[Docket No. CP94–341–000]

Take notice that on April 7, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 and Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas, 77002, filed a joint application pursuant to section 7(b) of the Natural Gas Act requesting authority to abandon an exchange service between Natural and Transwestern performed under Natural's Rate Schedule X–69 and Transwestern's Rate Schedule X–14, which were both authorized in Docket No. CP75–71 (as amended), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural and Transwestern state that pursuant to their exchange agreement dated August 12, 1974 (as amended), Natural and Transwestern exchanged up to 10,000 Mcf of natural gas per day. It is indicated that Natural made available gas to Transwestern in Eddy, Lea and Chaves Counties, New Mexico and in Ward County, Texas and Transwestern made available equivalent volumes of gas to Natural in Roosevelt and Eddy Counties, New Mexico and in Beckam County, Oklahoma. Natural and Transwestern claim that pursuant to their termination agreement dated January 31, 1994, Natural and Transwestern agreed to terminate the Agreement (as amended) effective June 15, 1993.

Comment date: May 4, 1994, in accordance with Standard Paragraph F 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9583 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–207–000]

Alabama-Tennessee Natural Gas Co.; Petition for Limited Waiver

April 18, 1994.

Take notice that on April 13, 1994, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed with the Commission a petition for a limited waiver of certain reporting requirements pertaining to the filing of notices of termination and initial reports as set forth in §§ 284.106 and 284.223 of the Commissions regulations.

Alabama-Tennessee requests that the Commission grant a limited waiver of its reporting requirements with respect to the time limitation for filing notices of termination and initial reports which relate to the release of capacity by two of its distributor customers pursuant to Alabama-Tennessee's restructured tariff.

Alabama-Tennessee states that copies of the filing have been served upon each person designated on the official service list compiled by the Secretary.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 25, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9715 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–170–001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 18, 1994.

Take notice that on April 14, 1994, Algonquin Gas Transmission Company (Alogonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of April 1, 1994:

Sub Third Revised Sheet No. 97

Algonquin states that the purpose of this filing is to comply with the Letter Order issued in this docket on March 31, 1994.

Algonquin states that copies of this filing were served upon each affected party and interested state commissions and parties on the service list in Docket No. RP94–170–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before April 25, 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. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9717 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–343–000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

April 18, 1994.

Take notice that on April 8, 1994, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80994, filed in Docket No. CP94–343–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authority for the operation of an existing delivery facility previously constructed to effectuate transportation services pursuant to Section 311 of the Natural Gas Policy Act, all as more fully set forth in the notice of request under blanket authorization which is on file with the Commission and open to public inspection.

Specifically, CIG states that it has constructed the Second Creek Delivery Facility in the City and County of Denver, Colorado for the delivery of gas to Public Service Company of Colorado (PSCo). PSCo will deliver the gas to the Natural Fuels station at the Denver International Airport, where the gas will be used for fueling rental car shuttle vans. By its request, CIG seeks authority to operate this facility pursuant to the blanket certificate provision of Section 7(c) of the Act.

CIG states that it believes that it would experience no significant impact on its peak day or annual requirements resulting from the operation of the subject facility in interstate commerce, and that the operation can be performed without detriment or disadvantage to CIG's other existing customers as the transportation service is provided on an interruptible basis.

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 therefore, 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. 94–9716 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–157–000]

Columbia Gas Transmission Co.; Technical Conference

April 18, 1994.

In the Commission's order issued on March 31, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Wednesday, April 27, 1994, 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9719 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC94–1–000]

Columbia Gas Transmission Corp.; Withdrawal of Request For Waiver

April 18, 1994.

Take notice that on April 15, 1994, Columbia Gas Transmission Corporation (Columbia), located at 1700 MacCorkle Avenue SE., P.O. Box 1273, Charleston, WV 25325, filed to withdraw its earlier request for a waiver of certain portions of part 281, subpart B of the Commission's regulations.

In its Annual Filing to Update Index of Entitlements made on March 31, 1994 in the above-referenced docket, Columbia requested that the Commission waive compliance with the data verification process requirements for 1994 and future years. In its withdrawal of such request, Columbia now states that it will continue to update its Index of Entitlements annually as required by § 281.204(b)(2) of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before April 25, 1994, file with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the NGA (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 petition to intervene in accordance with the Commission's Rules. Any person who has heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9720 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–16–000]

Florida Gas Transmission Co.; Technical Conference

April 15, 1994.

Take notice that a technical conference will be convened in this proceeding on April 19, 1994, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The purpose of this conference is to afford Florida Gas and interested parties an opportunity to discuss curtailment on Florida Gas' system, specifically including the scheduling and curtailment issues raised by a remand order issued February 16, 1993, in *Georgia Pacific* v. *FERC*, D.C. Cir. Nos. 91–1489 and 91–1490.[1]

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208–1076.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9618 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[1] See Florida Gas Transmission Co., 65 FERC ¶ 61,336 at 62,597 (1994).

[Docket No. CP94–358–000]

Midwest Gas Storage Inc.; Application

April 18, 1994.

Take notice that on April 14, 1994, Midwest Gas Storage Inc. (Midwest), 13100 Southwest Highway, Palos Park, Illinois 60464, filed in Docket No. CP94–358–000 an application for a part 284, subpart G blanket transportation certificate under § 284.221 of the Commission's Regulations (18 CFR 284.211) authorizing Midwest to perform open-access, self-implementing, non-discriminatory storage service on behalf of others, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Midwest requests certificate authorization pursuant to part 284 to perform blanket, self-implementing firm and interruptible storage service. Midwest also request pregranted authorization to abandon service as provided in subpart G of part 284 of the Commission's Regulations. Midwest states that the requested blanket certificate will be substituted for Midwest's existing open-access storage certificate in Docket No. CP90–454–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 28, 1994, 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 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 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 is 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 Midwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9712 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–6–004]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 15, 1994.

Take notice that on April 8, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

On February 25, 1994, Northern filed to modify its tariff to provide that any allocation of GSR and Stranded Account No. 858 costs will incorporate the weighted average peak day contract entitlement for GS–T customers. During the comment period on such filing, the Northern Municipal Distributor Group and the Midwest Region Gas Task Force (NMDG/MRGTF) requested a slight modification to the revised provision to more accurately describe the entitlements that Northern would utilize to calculated the weighted average peak day for Rate Schedule GS–T. Therefore, Northern has filed Substitute Third Revised Sheet No. 245 and Substitute First Revised Sheet No. 248 to reflect this modification effective November 1, 1993.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9617 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG94–3–000]

Midwest Gas Storage, Inc.; Filing and Request For Waiver of Regulation

April 15, 1994.

Take notice that on April 8, 1993, Midwest Gas Storage, Inc. (Midwest) filed procedures to ensure its compliance with the requirements of Order Nos. 497 *et seq.*[1] In addition, Midwest petitioned the Commission for a waiver of the requirements of Standard H, 18 CFR 161.3(h). Standard H provides that a pipeline company may not condition or tie its agreement to release gas subject to take-or-pay relief to an agreement by the producer,

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,920 (1988); Order No. 497–A (order on rehearing), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B (order extending sunset date), 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C (order extending sunset date), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992), Order No. 497–D (order on remand and extending sunset date), 61 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E (order on rehearing and extending sunset date), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶ 30,987 (December 23, 1993), Order No. 497–F (order denying rehearing and granting clarification), 66 FERC ¶ 61,347 (March 24, 1994).

customer, end-user, or shipper relating any service by its marketing affiliate, any services by it on behalf of its marketing affiliate, or any services in which its marketing affiliate is involved.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 2, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9614 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–35–000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

April 15, 1994.

Take notice that on April 7, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets with a proposed effective date of May 8, 1994:

Tenth Revised Sheet No. 1–A,
Seventh Revised Sheet No. 1–D,
Seventeenth Revised Sheet No. 2–A,
Second Revised Sheet No. 1542.

Northwest states that the purpose of this filing is to cancel Rate Schedule X–87. Rate Schedule X–87 is a Gas Transportation and Exchange Agreement (Agreement) between Northwest and ANR Pipeline Company (ANR), dated January 23, 1985, as amended. In a reverse auction conducted by ANR pursuant to ANR's restructuring under Order Nos. 636 *et seq.* of the Federal Energy Regulatory Commission (Commission), Coastal Gas Marketing Company (Coastal) submitted a winning bid for an assignment of the rights and obligations of ANR under the Agreement. Northwest states that the assignment of this contract to Coastal terminated the contractual arrangement between ANR and Northwest under Rate Schedule X–87 as of November 1, 1993, pursuant to 18 CFR 284.242.

Northwest states that a copy of this filing has been served upon ANR.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 22, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9615 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–173–001]

Southern Natural Gas Co.; Refund Report

April 15, 1994.

Take notice that on April 12, 1994, Southern Natural Gas Company (Southern) tendered for filing a refund report pursuant to section 35 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1.

Pursuant to the letter order issued in Docket No. RP94–173–000 by the Office of Pipeline and Producer Regulation on March 28, 1994, Southern resubmits herewith for filing a summary refund report and First Substitute Original Tariff Sheet No. 34A on the termination of its purchased gas adjustment provision.

The March 28th order requires that Southern remove the level of unpaid accruals from its Account 191 balance as of October 31, 1993. In accordance with this requirement, Southern states that it has credited $656,808 to the commodity balance resulting in a revised credit balance of $2,113,239 and a revised total Account 191 balance of $1,771,242.

Southern states that copies of the filing are being mailed to all of Southern's former jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (§ 385.211). All such protests should be filed on or before April 22, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9616 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–228–042]

Tennessee Gas Pipeline Co.; Report of Reconciliation

April 18, 1994.

Take notice that on April 4, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its TGIC Reconciliation Report pursuant to Article XXXIII of Fourth Revised Volume No. 1 of its tariff.

Tennessee states that the reports details the costs and revenues under its Transition Gas Inventory Charge (TGIC) during the period July 1992–August 1993. Pursuant to § 4.1(c) of Article XXXII, this report is subject to the Protective Order issued on June 5, 1990 by the Administrative Law Judge in Docket No. RP88–228.

Tennessee states that copies of this report are concurrently being provided, on a confidential basis to all firm sales customers under the TGIC.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 22, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9619 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–139–001]

Williston Basin Interstate Pipeline Co.; Compliance Tariff Filing

April 18, 1994.

Take notice that on April 14, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Second Revised Sheet No. 33
Original Sheet No. 33A
Second Revised Sheet No. 63
First Revised Sheet No. 93
Second Revised Sheet No. 109
First Revised Sheet No. 123

In compliance with an Office of Pipeline and Producer Regulation (OPPR) Letter Order issued March 30, 1994 in the above-referenced docket, Williston Basin submitted the above tariff sheets to clarify the procedures to be followed by Shippers when changing their method of reimbursement for fuel use, lost and unaccounted for gas, all as more fully explained in the filing which is on file with the Commission and open for public inspection.

Williston Basin respectfully requests that the above tariff sheets be made effective April 14, 1994, the date of filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before April 25, 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. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9714 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–103–002]

Williston Basin Interstate Pipeline Co; Compliance Filing

April 18, 1994.

Take notice that on April 14, 1994 Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing, under protest, revised tariff sheets to Second Revised Volume No. 1 of the Company's FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being filed, under protest, in compliance with a Commission Letter Order issued March 30, 1994 in the above-referenced docket and reflects the flow back of purchased gas adjustment refunds in perpetuity.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before April 25, 1994. All such protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9718 Filed 4–20–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of a total of $144,864.85, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Consent Order issued to N. C. Ginther Company, Case No. LEF–0060. The OHA has tentatively determined that the funds will be distributed in accordance with the provision of 10 CFR part 205, subpart V and 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to Case Number LEF–0060.

FOR FURTHER INFORMATION CONTACT: Janet R. H. Fishman, Staff Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2400.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $144,864.85, plus accrued interest, obtained by the DOE under the terms of a Consent Order that the DOE and N. C. Ginther Company agreed to on March 25, 1983. Under the Consent Order, all civil and administrative claims and disputes between N. C. Ginther Company and the DOE were settled concerning Ginther's compliance with the federal petroleum price and allocation regulations with respect to all sales of natural gas liquids and natural gas liquid products by Ginther during the consent order period.

The OHA has proposed to distribute the Consent Order fund in a two stage refund proceeding. Purchasers of propane, butane, and natural gasoline from N. C. Ginther Company will have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of propane, butane, and natural gasoline they purchased from N. C. Ginther Company during the relevant audit period. In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submissions, within 30 days of publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments so received, will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: April 14, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Petitioner: N. C. Ginther Company
Date of Filing: July 20, 1993
Case Number: LEF–0060

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and

Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through a Consent Order between ERA and N.C. Ginther Company (Ginther), pursuant to 10 CFR part 205, subpart V. This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Since the procedures set forth in this Decision are in proposed form, no refund applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of Ginther refund applications is authorized.

I. Background

Ginther was a "gas plant operator" (as defined in 10 CFR § 212.162) and its sales were subject to DOE price regulations. During the period covered by the Consent Order, Ginther sold propane, butane, and natural gasoline (natural gas liquids products). An ERA audit of Ginther's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR part 212 subparts E and K, in specified transactions during the period September 1, 1973, through March 31, 1977 (the consent order period).[1] Consequently, the ERA issued a Notice of Probable Violation (NOPV) to Ginther on December 31, 1980, alleging pricing violations in the sale of propane, butane, and natural gasoline during the audit period. On March 25, 1983, Ginther and the DOE entered into a Consent Order. The Consent Order refers to the ERA's allegations of regulatory violations. It also includes Ginther's denials that any such violations occurred.

Under the terms of the Consent Order, Ginther was required to refund the sum of $175,000, including interest through January 31, 1983, in 36 monthly installments beginning thirty days after the effective date of the Consent Order. There is a total of $144,864.85, plus accrued interest, available for restitution. This Decision concerns the distribution of all funds in the Ginther escrow account, including any which may be received after the date of this determination.

[1] Ginther owned all or a portion of four gas processing plants for various lengths of time during the audit period. In addition, Ginther owned and operated Ginther Energy Marketing Company and A & V Gas Service, Inc. In accordance with the definition of a firm in 10 CFR 212.31, the four gas processing plants, Ginther Energy Marketing Company, and A & V Gas Service, Inc., constitute one firm and were regarded as such by ERA in the audit. Notice of Probable Violation issued to N.C. Ginther dated December 31, 1980.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, see Office of Enforcement, 9 DOE ¶ 82,553 (1982); Office of Enforcement, 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981). We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the Ginther consent order fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund.

II. Proposed Refund Procedures

We propose to implement a two-stage refund process by which purchasers of Ginther natural gas liquids (NGL) products during the consent order period may submit Applications for Refund in this initial stage. From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities and cooperatives; and (iii) refiners, resellers, and retailers (collectively "resellers").

A. First Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Ginther NGL products during the consent order period. If the product was not purchased directly from Ginther, the claimant must establish that the product originated with Ginther. Additionally, a reseller claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Ginther's alleged overcharges. This showing will generally consist of two distinct elements. First, a reseller claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[2]

[2] Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. See Husky Oil Co./Metro Oil Products, Inc., 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant may not receive a refund for any month in which it has a negative cumulative bank (for that product) or for any preceding month. See Standard Oil (Indiana)/Suburban Propane Gas Corp., 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to allow approximations of those banks prepared by the applicant. See, e.g., Gulf Oil Corp./Sturdy Oil Co., 15 DOE ¶ 85,187 (1986).

Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. See Vickers Energy Corp./Hutchens Oil Co., 11 DOE ¶ 85,070, at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from Ginther. See National Helium Co./Atlantic Richfield Co., 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co.* v. *Department of Energy*, 618 F. Supp. 1199 (D. Del. 1985).

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, e.g., Marathon Petroleum Co., 14 DOE ¶ 85,269 (1986) (Marathon). Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 C.F.R. § 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Ginther's sales of NGL products during the consent order period. In accordance with this presumption, refunds will be made on a pro-rata or volumetric basis.[3]

[3] Because we realize that the impact on an individual claimant may have been greater than the volumetric refund amount, we will allow any purchaser to file a refund application based upon a claim that it suffered a disproportionate share of Ginther's alleged overcharges. See, e.g., Standard Oil (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984). Such an application will be granted only if an applicant makes a persuasive showing that: (1) it was "overcharged" by a specific amount, (2) it sustained a disproportionate share of Ginther's alleged overcharges, and (3) it was injured by those overcharges. See MCO Holdings, Inc., MGPC, Inc./Little America Refining Co., 19 DOE ¶ 85,560 (1989); Marathon Petroleum Co./Red Diamond Oil Co., 19 DOE ¶ 85,543 (1989); Getty Oil Co./Atchison, Topeka & Santa Fe Railroad Co., 18 DOE ¶ 85,107 (1988). To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. In computing the appropriate refunds of this type, we will prorate the

In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the consent order fund is equal to the number of gallons purchased from the consent order firm during the applicable consent order period times the per gallon refund amount. In the present case, the per gallon refund amount is $0.0057. We derived this figure by dividing the consent order fund, $144,864.85, by 25,312,920 gallons, the approximate number of gallons of covered refined products which Ginther sold from September 1973 through March 1977. A firm that establishes its entitlement to a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[4]

In addition to the volumetric presumption, we also propose to adopt a number of presumptions regarding injury for claimants in each category listed below. These presumptions are intended to ease what would be a time-consuming and potentially expensive process if an applicant were forced to demonstrate that they absorbed the alleged overcharges.

2. End-Users

In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of Ginther NGL products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. See, e.g., Texas Oil and Gas Corp., 12 DOE ¶ 85,069, at 88,209 (1984) (TOGCO). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* We therefore propose that the end-users of Ginther NGL products need only document their purchase volumes from Ginther during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

3. Regulated Firms and Cooperatives

We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, i.e., a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. See Marathon, 14 DOE at 88,514–15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharge would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[5]

4. Refiners, Resellers, and Retailers

a. Small Claims Presumption

We propose to adopt a "small claims" presumption that a firm which resold Ginther products and requests a relatively small refund was injured by the alleged overcharges. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of Ginther products it purchased during the consent order period. See TOGCO, 12 DOE at 88,210. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might even exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable because it allows the OHA to process the large number of routine refund claims in an efficient manner.[6]

b. Mid-Level Claim Presumption

In addition, a refiner, reseller, or retailer claimant whose allocable share of the refund pool exceeds $5,000, excluding interest, may elect to receive as its refund either $5,000 or 40 percent of its allocable share, up to $20,000,[7] whichever is larger.[8] The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the alleged overcharges. See Marathon, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed analyses in order to determine product-specific levels of injury. See, e.g., Getty Oil Co., 15 DOE ¶ 85,064 (1986). However, in Gulf Oil Corp., 16 DOE ¶ 85,381, at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury of 40 percent for all mid-level claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we therefore propose to adopt a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Ginther NGL products during the consent order period in order to be eligible to receive a refund of 40

refund amount by the ratio of the Ginther consent order amount as compared to the aggregate overcharge amount alleged by the ERA. Amtel, Inc./Whitco, Inc., 19 DOE ¶ 85,319 (1989) (Amtel/Whitco).

[4] As in previous cases, we propose to establish a minimum refund amount of $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See Exxon Corp., 17 DOE ¶ 85,590, at 89,150 (1988) (Exxon). Accordingly, an applicant must have purchased at least 2,544 gallons of NGL products from Ginther in order for its claim to be considered.

[5] A cooperative's purchases of Ginther products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc., 19 DOE ¶ 85,215 (1989).

[6] In order to qualify for a refund under the small claims presumption, a refiner, reseller, or retailer must have purchased less than 877,280 gallons of Ginther products during the consent order period. However, an applicant, who has purchased more than 877,280 gallons of Ginther products during the consent order period, may elect to limit its refund to the small claims presumption.

[7] In most prior proceedings, we have used a $40,000 mid-level claim presumption. However, due to the small size of the Ginther consent order fund and the rather small volumetric figure, this amount would be impractical.

[8] That is, claimants who purchased more than 877,281 gallons of Ginther products during the consent order period (mid-level claimants) may elect to utilize this presumption.

percent of its total allocable share, up to $20,000, or $5,000, whichever is greater.[9]

c. Spot Purchasers

We propose to adopt a rebuttable presumption that a reseller that made only spot purchases from Ginther did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. See, e.g., Vickers, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Ginther.[10]

B. Allocation Claims

We may also receive claims based upon Ginther's alleged failure to furnish products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 C.F.R. Part 211. Any such applications will be evaluated with reference to the standards set forth in Subpart V implementation cases such as Office of Special Counsel, 10 DOE ¶ 85,048, at 88,220 (1982), and refund application cases such as Mobil Oil Corp./Reynolds Industries, Inc., 17 DOE ¶ 85,608 (1988); Marathon Petroleum Co./Research Fuels, Inc., 19 DOE ¶ 85,575 (1989) (Marathon/RFI), aff'd sub nom. Research Fuels, Inc. v. Department of Energy, No. CA3–89–2983G (N.D. Tex. 1990), *aff'd*, 977 F.2d 601 (Temp. Emer. Ct. App. 1992). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish NGL products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Ginther may have had to the alleged allocation violation. See Marathon/RFI, 19 DOE ¶ 85,575. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Ginther. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the Ginther consent order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the Ginther consent order fund is less than Ginther's potential liability in the proceedings, we will pro rate those allocation refunds that would otherwise be disproportionately large in relation to the consent order fund. Cf. Amtel/Whitco, 19 DOE ¶ 85,319.

C. Distribution of Funds Remaining After First Stage

We propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Ginther consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

The amount available to the Department of Energy for restitution pursuant to the consent order entered into on March 25, 1983, by N. C. Ginther Company and the Department of Energy will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–9661 Filed 4–20–94; 8:45 am]
BILLING CODE 6450–01–P

[9] A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges, or that it is eligible for a refund of less than the applicable presumption-level refund, may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from Ginther. See Exxon, 17 DOE at 89,150 n.10.

[10] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases and (2) they were forced by market conditions to resell the product at a loss.

Western Area Power Administration

Salt Lake City Area Integrated Projects—Proposed Firm Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Salt Lake City Area Integrated Projects Firm Power Rate Adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing a rate adjustment for firm power for the Salt Lake City Area Integrated Projects (SLCA/IP). The power repayment study and other analyses indicate that the proposed rate for firm power is necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment, within the allowable time period. This rate adjustment is a result of inclusion of construction work in progress, the fiscal year (FY) 1994 and 1995 congressional budgets, more recent projections of project investments and interest, and updated operations and maintenance (O&M) expenses. Budgets for Western's O&M expenses do not exceed the FY 1993 actual O&M expenditures, compounded at 2 percent per year. The rate impact is detailed in a rate brochure to be distributed to all interested parties. The proposed rate for firm power is expected to become effective December 1, 1994.

The existing SLCA/IP firm power rate is comprised of an energy charge of 8.40 mills per kilowatthour (mills/kWh) and a capacity charge of $3.54 per kilowatt/month ($/kW/month), calculated at a 58.2 percent load factor.

The proposed firm power rate consists of an energy charge of 9.10 mills/kWh and a capacity charge of $3.86/kW/month, calculated at a 58.2-percent load factor. These components result in a composite rate of 20.44 mills/kWh, which may also be expressed as a combined rate of 18.18 mills/kWh. A combined rate is influenced by a predetermined load factor whereas a composite rate is influenced by the relationship between the project revenue requirement and the

corresponding period's available energy. The proposed composite rate is an increase of 9.3 percent over the existing composite rate.

The Assistant Secretary for Conservation and Renewable Energy, U.S. Department of Energy (DOE), approved the existing rate schedule on an interim basis on August 10, 1992 effective October 1, 1992. (57 FR 36981, August 17, 1992; and 57 FR 47073, October 14, 1992). Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on a final basis on February 18, 1993. (62 FERC Para. 61,159).

The following table compares the SLCA/IP existing rates with the proposed rates:

COMPARISON OF OLD AND NEW SLCA/IP FIRM POWER RATES

Type of service	Existing	Proposed	Percentage change
Energy rate (mills/kWh)	8.40	9.10	8.33
Capacity rate ($/kW/month)	$3.54	$3.86	9.04
Combined rate (mills/kWh)	16.72	18.18	8.73
Composite rate (mills/kWh)	18.70	20.44	9.3

Since the proposed rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the proposed rates for approval on an interim basis by the Deputy Secretary of DOE.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end not less than 90 days later, or July 19, 1994, whichever occurs later. A public information forum will be held at 1:30 p.m. on May 24, 1994, at the Holiday Inn, 999 South Main Street, Salt Lake City, Utah. A public comment forum at which Western will receive oral and written comments will be held at 1:30 p.m. on June 30, 1994, at the Holiday Inn, 999 South Main Street, Salt Lake City, Utah.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5493.

SUPPLEMENTARY INFORMATION: Power rates for the SLCA/IP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project systems involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate for firm power are and will be made available for inspection and copying at the Salt Lake City Area Office, located at 257 East 200 South, Suite 475, Salt Lake City, UT 84111–2048.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the SLCA/IP firm power rate adjustment is related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the SLCA/IP firm power rate is of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Issued in Golden, Colorado, April 13, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–9660 Filed 4–20–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4863–4]

Reorganization of the Michigan Department of Natural Resources and Effects to Michigan Wetlands Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (U.S. EPA) has made a preliminary determination that the Governor of Michigan's Executive Order 1991–31, which reorganized the Michigan Department of Natural Resources (MDNR), did not substantially revise the MDNR's wetlands program that administers the State assumed Clean Water Act Section 404 wetlands permitting authority. This preliminary determination is based upon review of the December 15, 1993 submittal of the MDNR's wetlands program description and supporting materials, and a statement from the Michigan Attorney General's Office dated February 25, 1994.

The U.S. EPA is seeking public comment concerning whether any substantial revisions to the State wetlands program were effected by the MDNR reorganization, and comment on Agency approval or disapproval of any revisions to Michigan's wetlands program as outlined in Executive Order 1991–31 and MDNR's December 15, 1993 submittal. Federal regulations at

40 CFR 233.16(d)(3) state that "substantial revisions" include, but are not limited to, revisions that affect the area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability.

Commenters should note that U.S. EPA is only seeking public comments in this notice on the revisions to Michigan's wetlands program as a result of the MDNR's reorganization. U.S. EPA is not seeking at this time, public comment on unrelated issues regarding Michigan's wetlands program.

DATES: The public comment period is open until May 23, 1994.

ADDRESSES: Copies of the State of Michigan's description of the wetlands program, related correspondence and the preliminary findings of no substantial revisions by the U.S. Environmental Protection Agency are available for public inspection at:

Library of Michigan, Government Documents Section, 717 West Allegan, Lansing, Michigan.

Olson Library, Northern Michigan University, Harden Circle Drive, Marquette, Michigan.

Comments should be sent to:

Dale S. Bryson, Director, Water Division, Attn: Douglas Ehorn, U.S. Environmental Protection Agency, 77 W. Jackson, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Douglas Ehorn, Chief, Wetlands and Watersheds section at the U.S. EPA address noted above or telephone (312) 353–2308.

SUPPLEMENTARY INFORMATION: The State of Michigan assumed Federal Clean Water Act Section 404 permitting authority in October 1984. Procedures for revision of State programs at 40 CFR 233.16 require that U.S. EPA review any revisions to the State wetlands program, determine whether such revisions are substantial or not substantial, and approve or disapprove the revisions.

Dated: March 25, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–9421 Filed 4–20–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00379; FRL–4778–5]

State FIFRA Issues Research and Evaluation Group (SFIREG); Working Committees on Enforcement/ Certification & Registration/ Classification; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Enforcement/Certification and Registration/Classification will hold a 3–day meeting, beginning on Wednesday, May 4, 1994, and ending on Friday, May 6, 1994. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Enforcement/Certification will meet alone on Wednesday, May 4, 1994, from 8:30 a.m. to 5 p.m., and the two Working Committees will meet together on Thursday, May 5, 1994, from 8:30 a.m. to 5 p.m. The Working Committee on Registration/Classification will meet alone on Friday, May 6, 1994, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at: The Red Lion Hotel - Austin Airport, 6121 North Interstate Highway - # 35, Austin, TX 78762 (512) 323–5466.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1109, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305–7164.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Enforcement & Certification includes the following:

1. Discussion of Worker Protection Standards.
2. Pesticide Inspector Training Update.
3. Compliance Assistance Issues.
4. Discussion of Cooperative Agreement Issues.
5. Status of the 40 CFR Part 165 Regulations.
6. Pesticide Field Data Plan.
7. Laboratory Equipment Funding.
8. Other topics as appropriate.

The agenda for the joint session of the SFIREG Working Committees on Enforcement/Certification and Registration/Classification will include:

1. Discussion of SMP Impacts on Registration and Enforcement.
2. Status of Section 25b Exemptions from Registration.
3. Surface Water Labelling and Enforcement Issues.
4. Discussion of Pesticide Use Reduction.
5. Container Cross-Contamination.
6. Chlorine: Discussion of States' Issues.
7. Groundwater Protection and Acetachlor.
8. Other topics as appropriate.

The agenda for the SFIREG Working Committee on Registration & Classification includes the following:

1. Status of Label Coding Projects.
2. Discussion of OPP Streamlining.
3. Termiticide Efficacy.
4. Label Changes by Notification.
5. Discussion of the Definition of Special Local Needs.
6. EPA's Priorities for Processing Registrations & Label Amendments.
7. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: April 15, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–9665 Filed 4–20–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–42074; FRL–4772–6]

State of Nebraska Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve, on a contingent basis, a certification plan.

SUMMARY: In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and 40 CFR part 171, the Governor of the State of Nebraska, E. Benjamin Nelson, has submitted a Plan for Certification of Pesticide Applicators in the State of Nebraska to the EPA for approval. EPA has been certifying applicators of restricted use pesticides in the State of Nebraska since 1977. The Plan submitted by the State of Nebraska provides details for the certification of commercial and private pesticide applicators and subsequent enforcement of pesticide laws and regulations pursuant to the Nebraska Pesticide Act. Notice is hereby given of the intention of the Regional Administrator, EPA, Region VII, to approve this Plan on a contingency basis as provided at 40 CFR 171.7.

DATES: Written comments should be submitted on or before May 23, 1994.

ADDRESSES: Send written comments, identified by the docket control number OPP–42074, to: Richard O. Jacobson, Lincoln Field Office, Environmental Protection Agency, 100 Centennial Mall North, Room 289, Lincoln, NE 68508.

The comments received pursuant to this notice will be available at the aforementioned location from 7:30 a.m. to 3:30 p.m., Monday through Friday.

Copies of the State of Nebraska Plan for Certification of Pesticide Applicators and attached appendices are available for review at the following locations during normal business hours:

1. Environmental Protection Agency, Lincoln Field Office, 100 Centennial Mall North, Rm. 289, Lincoln, NE 68508. Contact: Richard O. Jacobson (402) 437–5080.

2. Nebraska Department of Agriculture, Bureau of Plant Industry, 301 Centennial Mall South, Lincoln, NE 68509. Contact: Geir Friisoe (402) 471–2394.

3. Environmental Protection Agency, Field Operation Division (7506C), Office of Pesticide Programs, Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Public Docket: (703) 305–5805, Contact: Jeanne Heying (703) 305–7371.

FOR FURTHER INFORMATION CONTACT: Richard O. Jacobson, Lincoln Field Office, Environmental Protection Agency, 100 Centennial Mall North, Rm. 289, Lincoln, NE 68508, Telephone: (402) 437–5080.

SUPPLEMENTARY INFORMATION: The Nebraska Department of Agriculture has been designated as the State Lead Agency for the administration of the pesticide applicator certification program.

The responsibility for the program's implementation has been vested in the Department's Bureau of Plant Industry. Cooperating State agencies include the Institute of Agriculture and Natural Resources (IANR, Cooperative Extension Division), Nebraska Association of Resources Districts, Nebraska Department of Aeronautics, Nebraska Department of Environmental Quality, Nebraska Department of Health, Nebraska Department of Water Resources, Nebraska Game and Parks Commission, and Nebraska Natural Resources Commission. The Plan proposes that agreements or memoranda of understandings be developed with the cooperating State agencies, as appropriate, to ensure consistency of programs throughout the State. The Plan provides provisions for developing a Memorandum of Agreement and Cooperation with any Indian Tribe requesting such a Memorandum.

The IANR, Cooperative Extension Division, will: (1) Conduct certification and recertification training sessions, (2) make IPM instructional materials available, (3) advise and assist the Department by identifying, adopting, developing, producing and disseminating educational and training materials necessary for the certification program, (4) assist the Department in preparing certification examinations, and (5) furnish evidence to the Department that applicators have satisfactorily completed the requisite certification criteria.

The legal authority for the certification program is provided in The Pesticide Act, *Neb. Rev. Stat.* sections 2–2622 to 2–2655. Regulations to implement certain provisions of the Act have yet to be adopted. A copy of the Nebraska Pesticide Act and a schedule for the adoption of supporting regulations are attached to the Plan. Because this is proposed as a contingent approval, pending the State's adoption of supporting regulations, certain Federal regulations remain in effect. As examples, until such time as Nebraska adopts regulations concerning recordkeeping requirements for commercial pesticide applicators and recordkeeping requirements for restricted use pesticide dealers, regulations at 40 CFR 171.11(c)(7) and 40 CFR 171.11(g) will be enforced. The State of Nebraska Attorney General has provided an opinion that the Department has the legal authority to carry out the Plan.

The Department will recognize private and commercial certifications issued through the EPA administered Nebraska certification program until the expiration date indicated on the individual applicator's certification. Applicators with EPA issued Nebraska certifications will be allowed to recertify through the Nebraska certification program. The Department estimates that 8,159 commercial applicators and 38,352 private applicators will apply for certification. Certified applicators will be issued licenses which indicate the category(s) in which they are certified. The Plan indicates that the State will issue licenses for commercial, noncommercial, and private applicators. A noncommercial applicator shall mean a certified applicator who applies restricted use pesticides only on lands owned or controlled by his or her employer or for a governmental agency or subdivision of the State. A noncommercial applicator will be required to be certified and recertified by the same process as a commercial applicator. Noncommercial applicators will be exempt from a licensing fee. Private applicators will not be charged a licensing fee. Commercial, noncommercial, and private applicator licenses will expire 3 years from the date of issue and the applicator must recertify to renew the appropriate license.

The commercial applicator categories and subcategories are as follows:

(01) Agricultural pest control - plant,
(01A) Fumigation of soil,
(02) Agricultural pest control - animal,
(03) Forest pest control,
(04) Ornamental and turf pest control,
(05) Aquatic pest control,
(06) Seed treatment,
(07) Right-of-way pest control,
(08) Structural/health-related pest control,
(09) Public health pest control,
(10) Wood preservation and treatment,
(11) Fumigation (other than soil),
(12) Aerial pest control, and
(13) Regulatory/demonstration and research.

Applicators certified in (01A) Fumigation of soil will be required to be certified in (01) Agricultural pest control plant. Applicators certified in (12) Aerial pest control will be required to be certified in one or more additional categories relevant to the type of application being accomplished. Individuals who apply lawn care pesticides, either restricted use or general use, to the land of another for hire or compensation shall be certified in category (04) Ornamental and turf pest control. Individuals who apply structural pest control pesticides, either restricted use or general use, to the land of another for hire or compensation must be certified in category (08) Structural and health-related pest control.

The standards of competency for commercial applicators in Nebraska include those listed at 40 CFR 171.4 where the Nebraska categories correspond to EPA's. Where Nebraska has established categories beyond those at 40 CFR 171.4, Nebraska has defined corresponding standards of competency. All commercial and noncommercial applicators will be required to pass written examinations to become initially certified. The examinations will cover the general standards and the specific standards for the category(s) or subcategory in which the applicator aspires to be certified. All commercial and noncommercial applicators shall recertify by either passing the written examinations or by participating in a training course approved by the Department.

The standards of competency for private applicators in Nebraska include those listed at 40 CFR 171.5. Those private applicators using a restricted use pesticide through an irrigation system must also be licensed according to the Nebraska Chemigation Act, *Neb. Rev. Stat.* sections 46–1101 through 46–1148. Private applicators applying restricted use pesticides by fixed or rotary wing aircraft shall be required to meet the

same general and specific standards of competency as those set forth for commercial applicators. Nebraska has established that, included in the certification standards as established by the State, private applicators will be provided training concerning the proper and safe use of fumigants. Private applicators will be certified by one of three options: (1) Attending and actively participating in a training program approved by the Department, or (2) satisfactorily completing a comprehensive examination provided by the Department, or (3) satisfactorily completing a home study manual approved by the Department.

The direct supervision of a noncertified applicator by a certified applicator, if not prohibited by the label, requires adherence to the standards at 40 CFR 171.6. The noncertified applicator may work under the direct supervision of a certified applicator for a period not to exceed 60 days. After the 60–day period, in order to accomplish an application of a pesticide which requires certification, the noncertified applicator is required to become certified. Notification of direct supervision is required and a noncertified applicator cannot avoid the certification requirement by changing employers or by elapsed time intervals.

The Plan provides for the recognition of licenses or certificates issued by any other valid Federal, State or tribal entity. The Department will evaluate the issuing agency's standards of competency for each category or subcategory and either accept the license or certificate and waive further demonstration of competency if the category or subcategory standards are sufficiently comparable, or deny the license or certificate if the standards are not sufficiently comparable.

In addition to The Nebraska Pesticide Act which provides for enforcement authority for the State to implement a certification and training program, EPA believes that appropriate regulations need to be promulgated by Nebraska as outlined in an attachment to the Plan so the State may fully implement the Plan. Additionally, EPA maintains that the development of agreements by the State Lead Agency with the Cooperating State Agencies also involved in the certification process, is necessary in order to provide for relevant pesticide applicator training. Thirdly, through internal EPA review, it was determined that the Plan lacked language found at 40 CFR 171.4(c)(7) for the specific standards of competency for Nebraska's proposed category 08 Structural/health-related pest control.

Satisfaction of the above contingency specifications shall be accomplished by the State prior to January 1, 1995. Upon contingency approval, the State Lead Agency (the Nebraska Department of Agriculture) will initiate the certification of pesticide applicators as described in the Plan. EPA solicits comments on this proposal to give contingent approval to the Nebraska Plan. EPA will evaluate the comments and publish its final decision whether to give contingent approval.

Dated: April 12, 1994.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 94–9664 Filed 4–20–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59335B; FRL–4776–4]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–94–9. The test marketing conditions are described below.

EFFECTIVE DATES: April 11, 1194.

FOR FURTHER INFORMATION CONTACT: Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, D.C. 20460, (202) 260–3780.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–94–9. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–94–9. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

T–94–9

Date of Receipt: February 28, 1994.

Notice of Receipt: April 8, 1994 (59 FR 16812).

Applicant: Uni-Star Industries, Ltd.

Chemical: Starch-g-poly(methyl acrylate).

Use: Foam Loose Fill and Foam Sheet Packaging Material.

Production Volume: Confidential.

Number of Customers: Ten.

Test Marketing Period: Two months. Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

List of Subjects

Environmental protection, Test marketing exeptions.

Dated: April 11, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–9663 Filed 4–20–94; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Special Meeting of the Board of Directors of the Export-Import Bank of the United States

Time and Place: Wednesday, April 20, 1994, at 2 p.m. The meeting will be held at Eximbank in room 1141, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: 1. Tied Aid; 2. Project Finance; and 3. Environmental Program.

Public Participation: The meeting will be open to public observation. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893, not later than Tuesday, April 19, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to April 19, 1994, Loretta Carrier, room 1112, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566–8893 or TDD: (202) 535–3913.

Further Information: For further information, contact Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893.

Steven Besner,

Personnel Office, Management Services and Human Resources.

[FR Doc. 94–9620 Filed 4–20–94; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before June 20, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to the Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, Attention: FEMA Desk Officer, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0169.

Title: Write Your Own (WYO) Program.

Abstract: Under the Write Your Own (WYO) Program private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for WYO company policies issued under the WYO arrangement. In order to maintain adequate financial control over Federal funds, the National Flood Insurance Program requires each WYO company to submit monthly financial reports as required in FEMA regulation 44 CFR Part 62, Appendix B).

Type of Respondents: Businesses or other-for-profit.

Estimate of Total Annual Reporting and Recordkeeping

Burden: 693 hours.

Number of Respondents: 105.

Estimated Average Burden Time per Response: 33 minutes.

Frequency of Response: Monthly.

Dated: April 14, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–9623 Filed 4–20–94; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before June 20, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2625.

Type: New Collection—Generic Clearance Request for Customer Survey Activities.

Title: Voluntary Customer Surveys to Implement Executive Order 12862—Response and Recovery Individual Disaster Assistance Programs.

Abstract: The information obtained from voluntary customer surveys of individual disaster victims will be used to develop service delivery plans and establish customer service standards for disaster assistance programs, as well as to establish performance standards for individual field positions. The affected public will include individual disaster victims who have made application to one or more disaster assistance programs and whose applications have been completely processed.

Type of Respondents: Individuals and households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 3,250 hours.

Number of Respondents: 10,000.

Estimated Average Burden Time per Response: 15 minutes.

Frequency of Response: Other—one time after major disasters.

Dated: April 12, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–9624 Filed 4–20–94; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1022–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1022–DR), dated April 14, 1994, and related determinations.

EFFECTIVE DATE: April 14, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 14, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from extensive rainfall and flash flooding on March 25 through April 3, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Melvin J. Schneider of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Blount, Hamilton, Polk, Sevier and Unicoi Counties for Individual Assistant.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 94–9622 Filed 4–20–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Bank South Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 13, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bank South Corporation, Atlanta, Georgia; to merge with Citizens Express Company, Gainesville, Georgia, and thereby indirectly acquire The Citizens Bank, Gainesville, Georgia.

2. FCB Bancshares, Inc., Good Hope, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Commercial Bank of Cullman County, Good Hope, Alabama.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capital Commerce Bancorp, Inc., Milwaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Western Bancshares, Inc., Milwaukee, Wisconsin, and thereby indirectly acquire Milwaukee Western Bank, Milwaukee, Wisconsin.

Board of Governors of the Federal Reserve System, April 14, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–9602 Filed 4–20–94; 8:45 am]

BILLING CODE 6210–01–F

The Sumitomo Bank, Limited, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 1994.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The Sumitomo Bank, Limited, Tokyo, Japan; to engage *de novo* through

its majority owned subsidiary Sumitomo Bank Leasing and Finance, Inc., in leasing tangible personal property or acting as agent, broker, or adviser in leasing such property, in which the lessor relies on an estimated residual value of the property (at the expiration of the initial term of the lease) in excess of 25 percent, pursuant to § 225.25(b)(5)(ii) of the Board's Regulation Y.

2. The Sumitomo Bank, Limited, Tokyo, Japan; to engage *de novo* through its majority owned subsidiary Sumitomo Bank Leasing and Finance, Inc., in providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financings and loan syndications); and conducting financial feasibility studies, pursuant to § 225.25(b)(4)(vi)(A) System April 14, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–9603 Filed 4–20–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Docket No. C–3488]

Alvey Holdings, Inc., et al.; Prohibited Trade Practices, and Affirmative Correction Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Missouri-based corporation and its wholly-owned subsidiary to divest, to a Commission-approved buyer, its own horizontal carousel business within six months of acquiring White Storage & Retrieval Systems, Inc., otherwise, a Commission-appointed trustee will complete the divestiture. In addition, the respondents are required to comply with all the terms of a Hold Separate Agreement, and are prohibited, for a period of ten years, from acquiring, without prior Commission approval, any interest in any entity engaged in the manufacture or sale of horizontal carousels in the United States within the previous two years..

DATES: Complaint and Order issued March 30, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Howard Morse, FTC/S–3627, Washington, DC 20580, (202) 326–2949.

SUPPLEMENTARY INFORMATION: On Thursday, December 16, 1993, there was published in the **Federal Register,** 58 FR 65712, a proposed consent agreement with analysis In the Matter of Alvey Holdings, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 48, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–9626 Filed 4–20–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3200]

America's Favorite Chicken Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Georgia-based fast-food corporation from misrepresenting the extent to which any product or package is capable of being recycled, or the extent to which recycling collection programs are available for such products, and from making claims about any environmental benefit of its products or packaging unless it possesses competent and reliable evidence to substantiate the claims.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Catherine fuller, FTC/Chicago Regional Office, 55 East Monroe St., suite 1437, Chicago, IL. 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of America's Favorite Chicken Company, a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between America's Favorite Chicken Company, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent America's Favorite Chicken Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its principal office or place of business at Six Concourse Parkway, suite 1700, Atlanta, Georgia 30328.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission Thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules the Commission may without further notice to proposed respondent: (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

The term "product or package" means any product or package, including, but not limited to, any item used by respondent to contain, serve, or package goods, offered for sale, sold or distributed to the public by respondent, its successors and assigns; and also means any such product or package sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

The term "competent and reliable scientific evidence" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondent, America's Favorite Chicken Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, distribution, or use of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which any such product or package is capable of being recycled or the extent to which recycling collection programs for such product or package are available.

II

It is further ordered that respondent, America's Favorite Chicken Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, distribution, or use of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product or package offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representations; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that the respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order

from respondent America's Favorite Chicken Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns environmental claims made on the labels of packaging used to contain respondent's food products. The Commission's complaint charges that respondent made false and unsubstantiated claims that its packaging was recyclable after ordinary use. In fact, the complaint alleges, while the respondent's packaging is capable of being recycled, the vast majority of consumers cannot recycle it because there are virtually no collection facilities that accept food contaminated paper packaging for recycling.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. The proposed order extends to all products or packages that are used by the respondent to package its food products or that are sold to the public.

Part I of the proposed consent order prohibits the respondent from misrepresenting the extent to which any product or packaging is capable of being recycled or the extent to which recycling collection programs for such products or packaging are available. Part II of the proposed order prohibits the respondent from misrepresenting the environmental benefit of any product or packaging it uses unless at the time such representation is made the respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

The remaining parts of the proposed consent order require the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to each of its operating divisions and to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the Order, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–9629 Filed 4–20–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3024]

Manzella Productions, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York wholesaler of gloves, and its owner, from mislabeling the country of origin of any of their products, and from violating any provision of the Wool Products Labeling Act, and would require them to pay $7,500 in disgorgement.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Brinley Williams, FTC/Cleveland Regional Office, 668 Euclid Ave., suite 520–A, Cleveland, OH 44114. (216) 522–4210.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Manzella Productions, Inc., a corporation, and Anthony L. Manzella, Jr., individually and as an officer of said corporation ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between proposed respondents and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondents Manzella Productions, Inc., a corporation, and Anthony L. Manzella, Jr., individually and as an officer of said corporation, have an office or principal place of business located at 5684 Main Street, Post Office Box 1243, Buffalo, New York 14231.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft Complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

d. All claims under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the attached draft Complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft Complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its Complaint corresponding in form and substance with the attached draft Complaint and its decision containing the following

Order to Cease and Desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and Decision containing the agreed-to Order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the Complaint and the Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that respondents Manzella Productions, Inc., a corporation, and Anthony L. Manzella, Jr., individually and as an officer of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any gloves or other items of wearing apparel in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from violating any provision of the Wool Products Labeling Act (15 U.S.C. 68) and the Commission's Rules adopted thereunder (16 CFR part 300), and from misrepresenting, in any manner, directly or by implication, the extent to which any such gloves or other item of wearing apparel are made in the United States, or any other country.

II

It is further ordered that respondents, their successors and assigns, shall pay Seven Thousand, Five Hundred Dollars ($7,500) as disgorgement in lieu of consumer redress. Such payment shall be by cashier's check or certified check made payable to the Federal Trade Commission. Such check shall be held by counsel for the respondents until this Order becomes final and then delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, within ten (10) days of this Order becoming final. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, respondents shall pay interest as computed under 28 U.S.C. 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents or their successors and assigns shall maintain and, upon request, make available to the Federal Trade Commission for inspection and copying:

(A) All materials that were relied upon in disseminating such representations; and

(B) All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that the respondent corporation shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

V

It is further ordered that the respondent corporation shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is further ordered that respondent Anthony L. Manzella, Jr., shall, for a period of seven (7) years from the date of entry of this Order, notify the Federal Trade Commission, within thirty (30) days, of the discontinuance of his present business and of his affiliation with any new business or employment. Each notice of affiliation with any new business shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment, and his duties and responsibilities.

VII

It is furthered ordered that respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file will the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed Consent Order from respondents Manzella Productions, Inc., a corporation, and Anthony L. Manzella, Jr., individually and as an officer of said corporation.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed Order contained in the agreement.

The Commission's Complaint in this matter alleges that respondents have sold and distributed gloves manufactured in a foreign country from foreign components. It further alleges that respondents removed the foreign country-of-origin labels from gloves and replaced them with labels deceptively representing that the gloves were made in the U.S.A., in violation of the Federal Trade Commission Act, the Wool Products Labeling Act (WPLA), and Commission regulations pursuant to the WPLA.

The Consent Order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed Order requires the respondents to cease violating the WPLA and misrepresenting the extent to which any item of wearing apparel is made in the United States or any other country.

Part II of the proposed Order provides that the respondents will pay Seven Thousand, Five Hundred Dollars ($7,500) in disgorgement in lieu of consumer redress. Such payment is to be made within ten (10) days after the Order becomes final.

The proposed Order also requires the respondents to maintain materials relied upon the claims covered by the Order, to distribute copies of the Order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the Order, to notify the Commission of any changes in the business or employment of the named individual respondent, and to file one or more reports detailing compliance with the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–9630 Filed 4–20–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3486]

Mr. Coffee, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Ohio corporation, that manufactures coffee makers, filters and other products, from making false or unsubstantiated environmental claims for any paper product or package it markets.

DATES: Compliant and Order issued March 25, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Kevin Bank, FTC/S–4002, Washington, DC 20580. (202) 326–2675.

SUPPLEMENTARY INFORMATION: On Wednesday, April 14, 1993, there was published in the **Federal Register**, 58 FR 19439, a proposed consent agreement with analysis In the Matter of Mr. Coffee, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the compliant in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–9627 Filed 4–20–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[Dkt. C–3481]

Personal Protective Armor Association, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Maryland-based association for manufacturers of soft body armor (bullet-proof vests) from entering into any agreement with its members that would restrict them from engaging in comparative advertising or offering product-liability insurance, guarantees or warranties on soft body armor, and from placing any restraints on soft body armor advertising, that is not deceptive or false, including restricting information about prices, product availability, and body armor performance characteristics.

DATES: Complaint and Order issued March 17, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Paul Nolan, FTC/S–2624, Washington, DC 20580. (202) 326–2770.

SUPPLEMENTARY INFORMATION: On Wednesday, January 5, 1994, there was published in the **Federal Register**, 59 FR 585, a proposed consent agreement with analysis In the Matter of Personal Protective Armor Association, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–9628 Filed 4–20–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0197, General Services Administration Regulation (GSAR) part 537, Service Contracting. This information collection is necessary to determine whether a prospective contractor is responsible by obtaining information regarding financial and other capabilities of the prospective contractor.

AGENCY: Office of GSA Acquisition Policy (VP).

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets, NW., Washington, DC 20405.

ANNUAL REPORTING BURDEN: *Respondents:* 2,200, *annual responses:* 1; *average hours per response:* 1, *burden hours:* 2,200.

FOR FURTHER INFORMATION CONTACT: Betty Moran (202) 501–4764.

COPY OF PROPOSAL: A copy of this proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F Streets, NW., Washington, DC 20405, or by

telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: April 15, 1994.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 94–9651 Filed 4–20–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of the Board of Scientific Counselors, NIDCD

Notice is hereby given of a change in the meeting April 21 of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders, which was published in the **Federal Register** on March 28, 1994, 59 FR 14422.

This meeting was to have convened at 1 p.m. on April 21, but has been changed to 1 p.m. on May 2, in Building 31, room 3CO5, National Institutes of Health.

The meeting will be open to the public from 1 p.m. to 2:45 p.m.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: April 18, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9754 Filed 4–20–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavorial and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–504–7265, will furnish summaries of the meetings and rosters of panel members.

Meeting to Review Individual Grant Applications

Scientific Review Administrator: Dr. Leonard Jacubczak (301) 594–7198.
Date of Meeting: April 27, 1994.
Place of Meeting: Holiday Inn, Chevy Chase, MD.
Time of Meeting: 8:30 a.m.

Scientific Review Administrator: Dr. Peggy McCardle (301) 594–7293.
Date of Meeting: May 12, 1994.
Place of Meeting: Westwood Bldg, Rm 305, NIH, Bethesda, MD, Telephone Conference.
Time of Meeting: 1 p.m.

Scientific Review Administrator: Dr. Peggy McCardle (301) 594–7293.
Date of Meeting: June 14, 1994.
Place of Meeting: Westwood Bldg, Rm 305, NIH, Bethesda, MD, Telephone Conference.
Time of Meeting: 1:30 p.m.

Scientific Review Administrator: Dr. Peggy McCardle (301) 594–7293.
Date of Meeting: June 22, 1994.
Place of Meeting: Westwood Bldg, Room 305, NIH, Bethesda, MD, Telephone Conference.
Time of Meeting: 3 p.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 18, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9755 Filed 4–20–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS) Chapter HC (Center for Disease Control and Prevention), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 59 FR 4720–4721, February 1, 1994) is amended to reflect the retitling of the Office of Program Resources within the National Center for Infectious Diseases (NCID) to the Office of Planning and Health Communication and to modify the functional statement.

Section HC–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the Office of Administrative Services (HCR13), delete the title and functional statement for the Office of Program Resources (HCR14) and insert the following:

Office of Planning and Health Communication (HCR14)

The Office of Planning and Health Communication provides support to NCID staff in carrying out the mission of prevention and control of infectious diseases of public health importance. To do this, the Office (1) coordinates information resources by exercising review and approval authority for computer, word processing, and telecommunication equipment; develops NCID information resources management strategic plans; plans and develops NCID-wide information systems for disease surveillance, epidemiologic investigations, reference diagnostic services, and applied research; assures that training, consultative services, and software systems are available NCID-wide; (2) maintains liaison with other CDC components, Federal agencies, and international organizations, providing administrative and consultative support for bilateral and multilateral agreement activities, and coordinates the activities of foreign visitors at NCID, providing for orientation and short-term training when appropriate; (3) coordinates budget initiative submissions and preparation of the infectious disease part of the CDC budget briefing document, manages the NCID project tracking system, consolidates and prepares program review documents, assists in the analysis of infectious disease programs and development of proposed legislation, tracks NCID's progress toward program objectives, and maintains liaison with other program planning offices in CDC; (4) provides policy clearance and editorial assistance in the preparation of scientific articles and other documents for publication or presentation; assists with bibliographic searches; maintains databases of manuscripts and published works by NCID staff; provides training in various aspects of publishing and presenting science to different audiences; assists with conference planning; designs, prepares, and facilitates clearance for health information pamphlets and

brochures; provides for and promotes usage of state-of-the-art graphics; provides liaison with the scientific information offices of other components of CDC; (5) provides staff services and coordination for the NCID Advisory Council, arranging meetings and preparing and distributing briefing information and minutes; (6) secures necessary clearances from the Office of Management and Budget for publication of instruments used in data collection; provides liaison with other components of CDC in the areas of human subject research protocol clearance, assurance of confidentiality, Privacy Act, surveillance issues, and ethical and policy review of NCID scientific projects and activities.

Effective Date: April 6, 1994.

David Satcher,

Director.

[FR Doc. 94–9576 Filed 4–20–94; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–94–3752; FR–3698–N–01]

Interest Rate for the Section 235(r) Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of change in interest rate.

SUMMARY: This notice announces a change in the maximum interest rate for mortgages to be insured under section 235(r) of the National Housing Act. The section 235(r) maximum interest rate is to be determined by the Secretary of HUD and published in the **Federal Register**. Mortgage market conditions now dictate that the Secretary increase the section 235(r) maximum rate from 7.00 percent to 8.00 percent. There is no change being made in the maximum margin of additional percentage points that may be added to the maximum rate if the established conditions are met. Therefore, the maximum for the premium section 235(r) interest rate will be 9.50 percent (8.00 percent for the rate of interest and 1.50 percent for the margin of additional percentage points).

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Program Evaluation Division, room B–133, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755–7470, Ext. 117; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 235(r) of the National Housing Act (12 U.S.C. 1715z) authorizes the Secretary to insure mortgages that refinance mortgages insured under section 235. The purpose of the program is to reduce the interest rate insured and assisted under section 235, so that the assistance payments which the Department pays on behalf of mortgagors is reduced. The regulations implementing the program are contained in 24 CFR part 235 (subpart H, on the refinancing of mortgages under section 235(r).

The interest rate for these loans is set by the Secretary and published in the **Federal Register** as authorized by 24 CFR 235.1202(b)(3). The previous section 235(r) interest rate of 7.00 percent was published in the **Federal Register** on October 8, 1993 (58 FR 52499). The market conditions dictate a change in the section 235(r) interest rate commencing on the date of publication of this notice.

The most recent HUD survey of Mortgage Market conditions (i.e., Secondary Market Prices and Yields), an OMB-designated Principal Federal Indicator, found that the dominant national FHA rate being quoted to potential homebuyers for "lock-in" commitments of 60 days or more was 7.50 percent on March 1, 1994, with an average of .42 points, and an effective interest rate of 7.56 percent. The 7.50 percent rate was dominant in most parts of the country. The same survey showed that FHA primary market effective interest rates continued to track FHA secondary market prices and yields. The average secondary market price reported for 7.50 percent FHA loans was $99.36 per $100, for a yield of 7.59 percent. The primary market rates and secondary market yields were up about 50 basis points from the February 1st survey.

The bond market has slumped substantially since February 4, 1994, when the Federal Reserve Board announced the first of two recent quarter-point increases in the target Federal-funds rate. Bond yields have risen dramatically as a result of investors' reaction to this action of the Federal Reserve, the Federal Reserve's repeated statements that it intends to increase rates further when needed to prevent inflation, and improving economic conditions which increase the possibility of inflation. The yield on 30-year Treasury bonds was 6.31 percent on February 3, 1994 and rose to 7.11 percent on March 31. Now that fears of inflation have returned, the yield curve for Treasury bonds has climbed and long-term rates are likely to be significantly higher in the next few months than they have been on the average in the recent past.

Most FHA mortgages are funded in the GNMA mortgage-backed securities market. Considering a spread, GNMA yields track Treasury market rates. Moreover, there is a 50 basis point spread between FHA contract interest rates and GNMA coupon rates (this covers the GNMA guarantee fee and servicing cost), and stable FHA mortgage interest rates tend to be about 50 basis points (.5 percent) above GNMA coupon rates. Since March 1, 1994, GNMA prices have continued to decline and yields to rise. By April 1, 1994, the GNMA 6.50 percent security (7.00 percent FHA loans) was trading in the two-month forward market at about ten points discount. Increasing the Section 235(r) rate by a full percentage point to 8.00 percent would permit such mortgages currently to be sold in the secondary market at a much more marketable discount.

Trends in conventional mortgage interest rates also confirm that the section 235(r) rate should be raised to 8.0 percent. On March 31, 1994, the Federal Home Loan Mortgage Corporation announced that the average interest rate for 30-year mortgages was 8.04 percent, up from 6.97 percent on February 4.

Adjusting the section 235(r) rate to 8.00 percent will bring this rate back into line with the rest of the FHA current production loans. Therefore, the maximum rate for section 235(r) mortgages is 8.00 percent beginning with the publication date of this notice. The maximum margin of additional percentage points that may be added to the maximum rate under 24 CFR 235.1202(b)(3)(i)(B) will remain at 1.50 percent.

The subject matter of this notice is categorically excluded from HUD's environmental clearance procedures, in accordance with 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

Dated: April 15, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–9688 Filed 4–20–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Earthquake Prediction Evaluation Council; Renewal

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Notice is hereby given that the Secretary of the Interior is renewing the National Earthquake Prediction Evaluation Council. The purpose of the Council shall be to evaluate predictions made by scientists not on the Council including both Government and non-Government scientists and to advise the Director of the Geological Survey as a basis for his deciding whether to issue a prediction or take other action pertinent to the potential for the occurrence of a future significant earthquake.

Further information regarding the Council may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

Certification of renewal is published below.

Certification

I hereby certify that renewal of the National Earthquake Prediction Evaluation Council is necessary and in the public interest in connection with the performance of responsibilities assigned to the Geological Survey in the National Earthquake Hazards Reduction program transmitted to the Congress on June 22, 1978, by the President under Sec. 5(f)(1) of the Earthquake Hazards Reduction Act of 1977, and in furthering the objectives of Sec. 202 of the Disaster Relief Act of 1974.

Dated: April 11, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–9640 Filed 4–20–94; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[AK–964–4230–05–P; 94–00163; F14903–A]

Alaska; Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Toghotthele Corporation, notice of which was published in the **Federal Register**, 56 F.R. 51727, on October 15, 1991, is modified by including the N½SE¼NE¼, Sec. 14, T. 4 S., R. 8 W., Fairbanks Meridian, Alaska, containing approximately 19 acres, as lands approved for conveyance.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the modified DIC may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until May 23, 1994 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given October 15, 1991, is final.

G. Steve Flippen,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 94–9600 Filed 4–20–94; 8:45 am]

BILLING CODE 4310–JA–P

[CA–026–4210–05; CACA–31363]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Lassen County, California have been examined and found suitable for classification for lease or conveyance to the Ravendale Elementary School under the provisions of the Recreation and Public Purposes Act, as amended, (43 U.S.C. 869, *et seq.*). Ravendale Elementary School proposes to use the lands for an elementary school. These lands are hereby classified for lease with option to purchase under the provisions of the Recreation and Public Purposes Act contained in Title 43 Code of Federal Regulations (CFR), parts 2912 and 2740:

Mount Diablo Meridian

T.34N., R.13E.,
Section 4; SE¼NW¼.
Containing 40 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/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.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove minerals.

4. Those rights for purposes of a RS 2477 road granted to the County of Lassen by permit CACA–8823.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Eagle Lake Resource Area, 705 Hall Street, Susanville, California.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under 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 person may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Susanville District Office, 705 Hall Street, Susanville, California 96130.

Classification Comments

These lands are not essential to any Bureau of Land Management program and no resource needed by the public will be lost through transfer to private ownership. Disposal will not be adverse to any known public or private interest. The Lassen County Planning Commission found the proposed school site consistent with the goals and policies of the Lassen County General Plan. The land meets the classification criteria in 43 CFR 2430.4(c) as land valuable for public purposes. The land may, therefore, be classified for lease with the option to purchase consistent with § 2430.2(b). This classification would be consistent with the criteria of 43 CFR 2410.1(a)–(d). Interested parties may submit comments involving suitability of the land for a school. Comments on the Recreation and Public Purposes Act 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 a school.

Any adverse comments will be reviewed 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 13, 1994.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 94–9649 Filed 4–20–94; 8:45 am]

BILLING CODE 4310–40–M

[CO–050–4210–03; COC–49757]

Notice Of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action COC–49757, recreation and public purpose classification amendment and Application for a Recreation Site Lease, Chaffee County, Colorado.

SUMMARY: The following public lands are added to the classification of 14 sites as suitable for lease under the Recreation and Public Purposes Act (R&PP) of July 14, 1926, as amended, 43 U.S.C. 869 et seq., and the regulations thereunder 43 CFR Parts 2740 and 2912. This classification was published in the **Federal Register** Volume 54, Number 96, on Friday, May 12, 1989. The public lands involved are segregated from the public land laws including the general mining laws, except for the R&PP Act.

Sixth Principal Meridian, Colorado

T. 50 N., R. 8 E., sec. 2 and 3, a metes and bounds description located at the northeast corner of the intersection of the Arkansas River and Colorado State Highway 291 north of Salida, Colorado, sometimes known as the Stone Bridge site. Contains approximately 52.54 acres.

DATES: Interested parties may submit comments on this action on or before May 16, 1994: Objections will be reviewed and this realty action may be sustained, vacated, or modified. Unless vacated or modified, this realty action will become final.

ADDRESSES: District Manager, Bureau of Land Management, PO Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: David Hallock, Realty Specialist, Bureau of Land Management, Royal Gorge Resource Area, PO Box 2200, Canon City, CO 81215–2200; Phone: (719) 275–0631.

SUPPLEMENTARY INFORMATION: The purpose of the classification and application for an R&PP lease is to allow recreational development on public land by the Colorado Division of Parks and Outdoor Recreation for use as a recreation site primarily for river access by boaters and fishermen. If issued, the lease will be issued subject to valid existing rights.

Donnie R. Sparks,

District Manager.

[FR Doc. 94–9652 Filed 4–20–94; 8:45 am]

BILLING CODE 4310–JB–M

[CA–942–5700–10]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, room E–2845, Sacramento, CA 95825, 916–978–4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Humboldt Meridian, California

T. 5 N., R. 6 E.—Dependent resurvey and subdivision of section 25, (Group 1002) accepted January 5, 1994, to meet certain administrative needs of the U.S. Forest Service, Shasta-Trinity National Forest.

Mount Diablo Meridian, California

T. 11 N., R. 8 W.—Corrective dependent resurvey, (Group 1035) accepted January 4, 1994, to meet certain administrative needs of the BLM, Ukiah District, Clearlake Resource Area.

T. 25 S., R. 32 E.—Dependent resurvey, and metes-and-bonds survey of lot 2, section 21, (Group 1137) accepted January 5, 1994, to meet certain administrative needs of the U.S. Forest Service, Sequoia National Forest.

T. 19 N. R. 6 E.—Supplemental plat of the NW ¼ of section 10, accepted January 28, 1994, to meet certain administrative needs of the BLM, Ukiah District, Redding Resource Area.

T. 38 N., R. 4 E.—Dependent resurvey, (Group 1126) accepted January 31, 1994, to meet certain administrative needs of the Bureau of Indian Affairs, Northern California Agency.

T. 19 S., R. 14 E.—Supplemental plat of a portion of section 18, accepted February 3, 1994, to meet certain administrative needs of the BLM, Bakersfield district, Hollister Resource Area.

T. 38 N., R. 2 W.—Corrective dependent resurvey, (Group 811) accepted February 7, 1994, to meet certain administrative needs of the U.S. Forest Service, Shasta-Trinity National Forest.

T. 22 S., R. 16 E.—Supplemental plat of the NW ¼ of section 30, accepted February 8, 1994, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

T. 14 N., R. 6 W.—Dependent resurvey, (Group 966) accepted March 8, 1994, to meet certain administrative needs of the BLM, Ukiah District, Clearlake Resource Area.

T. 24 N., R. 3 E.—Corrective dependent resurvey and subdivision of section 24, (Group 843) accepted March 8, 1994, to meet certain administrative needs of the BLM, Ukiah District, Redding Resource Area.

T. 14 N., R. 10 E.—Dependent resurvey and subdivision of sections 3, 4, 5, and 9, (Group 963) accepted March 17, 1994, to meet certain administrative needs of the U.S. Forest Service, El Dorado National Forest.

T. 36 N., R. 5 E.—Dependent resurvey of the south ½ of the section line between sections 21 and 22, (Group 1060) accepted March 24, 1994, to meet certain administrative needs of the BLM, Ukiah District, Redding Resource Area.

T. 18 S., R. 13 E.—Dependent resurvey, (Group 1174) accepted March 30, 1994, to meet certain administrative needs of the BLM, Bakersfield District, Hollister Resource Area.

San Bernardino Meridian, California

T. 3 N., R. 2 E.—Dependent resurvey, and metes-and-bounds survey, (Group 1106) accepted February 3, 1994, to meet certain administrative needs of the U.S. Forest Service, San Bernardino National Forest.

T. 1 S., R. 18 W.—Dependent resurvey, (Group 987) accepted March 7, 1994, to meet certain administrative needs of the National Park Service, Santa Monica Mountains Recreation Area.

T. 14 N., R. 6 E.—Dependent resurvey, (Group 1185) accepted March 31, 1994, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area. All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: April 12, 1994.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 94–9645 Filed 4–20–94; 8:45 am]

BILLING CODE 4310–40–M

[ID–942–04–342A–02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 11, 1994.

The plat representing the dependent resurvey of portions of the west and north boundaries and subdivisional lines, and the subdivision of section 6, and a metes-and-bounds survey in section 6, Township 5 North, Range 26 East, Boise Meridian, Idaho, Group No. 877, was accepted April 1, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: April 11, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–9641 Filed 4–20–94; 8:45 am]

BILLING CODE 4310–GG–M

[MT–940–04–4730–02]

Land Resource Management

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described land are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Principal Meridian, Montana

T. 1. S., R. 10 E.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of section 24 and the survey of new meanders along the present left bank of the Yellowstone River through a portion of section 24, Township 1 South, Range 10 East, Principal Meridian, Montana, was accepted March 22, 1994.

This survey was executed at the request of the Butte District Office.

T. 7 S., R. 26 E.

The plat representing the dependent resurvey of portions of the south boundary of the Crow Indian Reservation, Homestead Entry Survey No. 262 and Homestead Entry Survey No. 592 and Homestead Entry Survey No. 591, and the subdivision of Homestead Entry Survey No. 591, Survey of Parcels A and B within Homestead Entry Survey No. 591 and Tract No. 37 in unsurveyed, Township 7 South, Range 26 East, Principal Meridian, Montana, was accepted March 25, 1994.

This survey was executed at the request of the Custer National Forest, Region 1, U.S. Forest Service. The triplicate original of the preceding described plats will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these surveys, as shown on the plats, is received prior to the dates of official filings, the filings will be stayed pending consideration of the protest. The protested plats of survey will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: April 14, 1994.

Wayne Zinne,

Acting State Director.

[FR Doc. 94–9654 Filed 4–20–94; 8:45 am]

BILLING CODE 4310–DN–M

[OR–130–04–4210–04: GP4–136); WAOR 48464; 4–00151]

Realty Actions; Sales, Leases, etc.: Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public lands in Ferry, Lincoln, and Stevens Counties, Washington.

SUMMARY: This notice will serve to further specify the private lands initially identified for acquisition by exchange in the Notice of Realty Action published in Volume 57, page 45394 of the **Federal Register** on October 1, 1992. The following described private lands have been found suitable for acquisition under authority of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 23 N., R. 34 E., Sections 2, 3, 10 & 11;
T. 24 N., R. 34 E., Sections 10, 11, 14, 15, 20 through 30, 33, 34 & 35;
T. 24 N., R. 35 E., Sections 31 & 32;

Aggregating 11,380 acres, more or less, in Lincoln County, Washington.

Information concerning the exchange, including a more detailed legal description of the property proposed for acquisition, is available upon request at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

Date of Issue: April 12, 1994.

Joseph K. Buesing,

District Manager.

[FR Doc. 94–9648 Filed 4–20–94; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted For OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the commission has submitted a request for approval of questionnaires to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–349, Effects of the Arab League boycott of Israel on U.S. businesses, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

SUMMARY OF PROPOSAL:

(1) *Number of forms submitted:* one.
(2) *Title of form:* Costs to U.S. businesses associated with the Arab League boycott of Israel on U.S. businesses.
(3) *Type of request:* new.
(4) *Frequency of use:* Questionnaire, single data gathering, scheduled for 1994.
(5) *Description of respondents:* U.S. firms that exported or attempted to export goods or services to Arab League countries or to U.S. customers that used firm's good or service as an input into goods or services sold in Arab League countries in 1992–93.
(6) *Estimated number of respondents:* 540.

(7) *Estimated total number of hours to complete the forms:* 10,800.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Constance Hamilton (USITC, telephone No. (202) 205–3263). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone No. 202–395–7340). All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

Issued: April 18, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–9631 Filed 4–20–94; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Special and Regional Archives.

DATES: May 11, 1994, from 2 p.m. to 3:30 p.m.

ADDRESSES: National Archives at College Park, room 4200, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Update—Legislative Agency Task Force
Update—Center for Legislative Archives
(a) Establishing a State-of-the-Art Research Facility
(b) Video tapes of House and Senate Floor Proceedings
Other current issues and new business.

The meeting is open to the public.

Dated: April 12, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–9665 Filed 4–20–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for the Coordination of a Series of Meetings With Members of the Literary Field

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the planning, coordination, and facilitation of seven meetings with members of the literary field. It is anticipated that the meetings will take place in Omaha, San Diego, Pittsburgh, Chicago, San Jose, Minneapolis, and Atlanta, and that each meeting will be attended by approximately fifteen participants. The purpose of the meetings is to involve the literary field in gathering information as well as informing the field of any potential redesign of Literature Program categories and guidelines. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–09 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94–09 is scheduled for release approximately May 13, 1994 with proposals due June 13, 1994.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94–9644 Filed 4–20–94; 8:45 am]

BILLING CODE 7537–01–M

Change in Program Panel Meeting

AGENCY: National Endowment for the Humanities.

The meeting of the Humanities Panel scheduled for April 29, 1994, and published in the **Federal Register** on April 12, 1994 at page 17402 has been changed to May 25, 1994, in room 315 from 8:30 a.m. to 5 p.m. The meeting will review HBCU Faculty Graduate Study applications, submitted to Division of Fellowships and Seminars, for projects beginning after January, 1995.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–9658 Filed 4–20–94; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences.

Date and Time: May 11, 1994, 12:30 p.m.–5 p.m.; May 12, 1994, 8:30 a.m.–2 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 310/310.2, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Vernon L. Pankonin, Program Director, National Science Foundation, 4201 Wilson Boulevard, room 1045, Arlington, VA 22230. Telephone: 703/306–1820.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the Division of Astronomical Sciences on the definition of the Planetary Astronomy Program.

Agenda: All Day: Discussions about definition of the Planetary Astronomy Program.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9673 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: May 12, 1994; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: John Enderle, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9671 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–462, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: May 10, 1994; 8:30 a.m.—5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 365, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: John Enderle, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the government in the Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9670 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences.

Date and Time: May 9 and 10, 1994.

Place: National Science Foundation, 4201 Wilson Boulevard, room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. James T. Callahan, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1483.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate National Science Foundation Young Investigator proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9675 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cognitive, Psychological & Language Sciences; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Cognitive, Psychological & Language Sciences

Date and Time: May 10–12, 1994; 9:00 a.m.–6:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of meeting: Part-Open.

Contact Person: Dr. Merry Bullock, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1732.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: May 11, 1994; 1 p.m.–3 p.m. To discuss trends and opportunities in the area of human cognition and perception and NSF policies and practices.

Closed session: May 10, 1994, May 12, 1994, 9 a.m.–6 p.m.; May 11, 1994, 9 a.m.–12 p.m.; and 3 p.m.–6 p.m. To review and evaluate human cognition proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9680 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and committee code: Special Emphasis in Design and Manufacturing Systems Code #1194.

Date and time: May 10, 1994.

Place: 4201 Wilson Boulevard, room 580, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. Pius J. Egbelu, Program Director, Operations Research and Production Systems, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Operations Research and Production Systems Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9678 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and committee code: Special Emphasis Panel in Design and Manufacturing System Code #1194.

Date and time: May 10, 1994.

Place: 4201 Wilson Boulevard, Room 530, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. F. Stan Settles, Program Director, Design and Integration Engineering, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Design and Integration Engineering Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9677 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mechanical & Structural Systems.

Date and time: May 11–12, 1994; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Conference Room 320.

Contact person: Dr. Devendra P. Garg, Program Director, Dynamic Systems and Control, Telephone: (703) 306–1361.

Types of meetings: Closed.

Purpose of meeting: To provide advice and recommendations concerning RIA/REG proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Civil and Mechanical Systems as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9679 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Materials Research.

Date and time: May 13, 1994; 8 a.m. to 5:30 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. Lorretta J. Inglehart, Program Director, National Facilities and Instrumentation, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Telephone: (703) 306–1817.

Purpose of meeting: To provide advice and recommendations concerning Instrumentation Proposals submitted to Academic Research Infrastructure Program.

Agenda: To review and evaluate Academic Research Infrastructure as part of the selection process for awards.

Reason for closing: The proposals being evaluated include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9684 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Design and Manufacturing Systems Code #1194.

Date and Time: May 23, 1994.

Place: 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. K. (Cheena) Srinivasan, Program Director, Manufacturing Processes and Equipment, National Science Foundation, 4201 Wilson Boulevard, room 550, Arlington, VA 22230, Telephone: (703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Manufacturing Processes and Equipment Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9676 Filed 4–20–94; 8:45am]

BILLING CODE 7555–01–M

Notice of Workshop

The National Science Foundation (NSF) will hold a two-day workshop on Research Priorities in Networking and Communications Research on May 13, 1994, 8 a.m. to 10 p.m. and May 14, 1994, 8:30 a.m. to 4 p.m. at the Airlie House, Airlie, VA 22186.

The workshop will focus on setting priorities for NSF sponsored research in networking and communications. A report will be published to disseminate the recommendations of the workshop participants.

Although the workshop will not operate as an advisory committee, the public is invited to attend. Participants will include individuals, approximately 20 who are recognized leaders in the networking and communications research community.

For additional information, contact Drs. Aubrey Bush and Darleen Fisher, Program Directors, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1949.

Dated: April 18, 1994.

Stephen S. Wolff,

Division Director, Networking and Communications Research and Infrastructure.

[FR Doc. 94–9672 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Neuroscience (1158).

Date and Time: May 9–10, 1994; 9 a.m. to 5 p.m.

Place: Room 310, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Felix Strumwasser, Program Director, Neuronal and Glial Mechanisms, Division of Integrative Biology and Neuroscience, suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: May 10; 3 p.m. to 5 p.m., to discuss goals and assessment procedures. *Closed Session:* May 9; 9 a.m. to 5 p.m., and May 10, 9 a.m. to 3 p.m. To review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9674 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Meeting

The National Science Foundation (NSF) will hold a conference on May 31 to June 3, 1994. The meeting will take place at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202. Sessions will be held from 7:30–9:30 p.m. on May 31 and from 8:30 a.m. to 5 p.m. on June 1–2 and from 8:30 a.m. to 12 noon on June 3.

The goal of the conference will be to provide a forum for science, engineering, and mathematics faculty to share ideas and experience concerning effective ways of disseminating innovation in undergraduate science education; to encourage exchange between faculty in sciences and publishers of texts, software and multimedia; and to demonstrate effective reforms sponsored by federal agencies in undergraduate mathematics and science education.

The conference will not operate as an advisory committee. It will be open to the public. Participants will include approximately 300 national leaders in mathematics and science education.

For additional information, contact Dr. Ann McNeal, Program Director, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1666.

Dated: April 18, 1994.

Dr. Robert F. Watson,

Division Director, Undergraduate Education.

[FR Doc. 94–9682 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Workshop

The National Science Foundation (NSF) will hold a three and one-half day workshop June 6–9, 1994. The workshop will take place at the Windham Bristol Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037. Sessions will be held from 7–9 p.m. on June 6 and from 7:30 a.m. to 6:45 p.m. on successive days.

The goal of the workshop is to provide a forum for gathering the views and input of various constituencies and stakeholders in the undergraduate engineering education community on how to more effectively prepare engineering students for the challenges in an increasingly interdependent global society.

The workshop will not operate as an advisory committee. It will be open to the public. Participants will include approximately 12 leaders in engineering, mathematics and science education.

For additional information, contact Dr. Normal L. Fortenberry, Program Director, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1667.

Dated: April 18, 1994.

Robert F. Watson,

Division Director, Undergraduate Education.

[FR Doc. 94–9681 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and time: May 12, 1994; 7:30 p.m. to 9 p.m.; May 13, 1994; 8:30 a.m. to 5 p.m.; May 14, 1994; 8:30 a.m. to 4 p.m.

Place: The Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Elizabeth Teles, Program Director, Dr. Jack Waintraub, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1667.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Advanced Technician Education (ATE) Program Panel Meeting.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–9683 Filed 4–20–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Co., FERMI 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, appendix J, III.C, related to Type C local leak rate testing of containment isolation valves, to Detroit Edison Company (the licensee), for operation of the Fermi 2 Plant, located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of Appendix J. Paragraph III.C. of 10 CFR part 50 and approve alternative local leak rate testing of the containment isolation valves (CIVs) in the low pressure coolant injection (LPCI) lines of the residual heat removal (RHR) system. These lines are 24-inch

injection lines whose primary containment penetrations are designated as X–13A and X–13B. Each contains an outboard-of-containment motor-operated gate valve in series with an inboard-of-containment check valve having a 1-inch bypass line which contains a normally locked closed solenoid operated globe valve. The gate and globe valves are remotely operated from the control room. Under the provisions of General Design Criterion (GDC) 55 of Appendix A of 10 CFR part 50, these valves would be required to be designed in accordance with one of the listed configurations and designated as CIVs unless it can be demonstrated that the containment isolation provisions are acceptable on some other defined basis. The outside containment configuration contains a remote manual valve rather than an automatic or locked closed valve, but is acceptable because LPCI is required to operate for core cooling during an accident; therefore, no automatic containment isolation signal is used. The inboard valve configuration meets the explicit requirements of GDC 55.

In a letter dated May 24, 1993, the licensee provided justification to consider differing from the explicit requirements of GDC 55 in accordance with guidance contained in the staff's Standard Review Plan (SRP), NUREG–0800, section 6.2.4 "Containment Isolation System." Subsection II.6.e allows only a single CIV, outside containment, if the system is closed outside containment and certain other provisions are met. On this basis, the licensee proposed that the check valves and 1-inch solenoid operated globe valves inside containment no longer be considered as containment isolation valves and; therefore, no longer subject to the requirements of Paragraph III.C of Appendix J to 10 CFR part 50. These valves would still be considered reactor coolant pressure isolation valves and subject to those leak testing provisions which are identified in Technical Specification 4.4.3.2.2.

The licensee also requested an exemption from Paragraph III.C.2 which requires that CIVs subject to Type C tests, unless pressurized with fluid from a seal system, shall be pressurized with air or nitrogen to a pressure of Pa, the calculated peak containment internal pressure during a design basis accident. The licensee proposed an alternative test to measure the external leakage of the CIVs (the motor operated gate valves outside containment) using water as a test medium with a limited allowable leakage.

The Need for the Proposed Action

The proposed exemption is needed because compliance to Paragraph III.C.2 of 10 CFR part 50, Appendix J, would result in extended outage time and additional personnel radiation exposure while testing the CIVs described above, without additional safety benefit. The licensee's basis for proposing the alternate testing for the CIVs was demonstration of the existence of a water seal between the inboard and outboard containment valve configurations of these penetrations that would be maintained for at least 30 days following an accident, the consideration of the RHR system as a closed system outside of containment, and operation of the RHR pumps which assures that through-seat leakage would be leakage in towards containment despite any single active failure. With through seat leakage not a concern, the only other containment isolation valve leakage of concern would be external to the valve (such as a stem or bonnet leak). The licensee's proposed alternative testing provides an acceptable basis to resolve this concern. Therefore, adequate containment integrity is demonstrated and the underlying purpose of the regulations is achieved.

Environmental Impact of the Proposed Action

The proposed exemption would allow the substitution of an alternative testing for the required Type C leak rate testing for containment isolation valves. The staff has determined that the alternative testing would provide an acceptable basis for demonstrating containment integrity. The related proposed alternative basis for compliance with the provisions of GDC 55 does not require an exemption, but does formulate, in part, the basis for approval of the proposed exemption. The staff has determined that the justification provided by the licensee adequately meets the SRP section 6.2.4, II.6.e review criteria for an alternative basis to meet the requirements of GDC 55. The alternative design requirements provide adequate assurance of containment integrity. Although the inboard containment valve configurations will no longer be tested to the Type C integrated leak rate test criteria, these valves will continue to be leak tested to demonstrate their reactor coolant pressure isolation valve function. Therefore, post-accident radiological releases are not expected to exceed previously determined values as a result of the proposed action. Further, the exemption is not expected to have an impact on plant radiological effluent releases. The proposed action does have the potential to reduce occupational exposure by reducing the amount of time personnel are required to spend in a radiologically restricted area.

With regard to potential non-radiological impacts, the proposed action and related change to the Technical Specifications involve a change in the surveillance requirements and will not affect non-radiological plant effluents nor does it have any other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are not significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption and amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility and greater occupational exposure to plant personnel.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement, dated August 1981, for Fermi 2.

Agencies and Persons Consulted

The staff consulted with the State of Michigan regarding the environmental impact of the proposed action. The State had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's application and request for exemption dated May 24, 1993. This document is 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 Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 14th day of April, 1994.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–9610 Filed 4–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Entergy Operations, Inc.; Consideration of Issuance of Amendment To Facility Operating License and Opportunity For A Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47, issued to Entergy Operations, Inc. (the licensee), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment, requested by the licensee by letter of November 30, 1933, would represent a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1434, "Improved BWR/6 Technical Specifications," Revision 0, September 1992. NUREG–1434 has been developed through working groups composed of both NRC staff members and the BWR/6 owners and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TS. As part of this submittal, the licensee has applied the criteria contained in the Final NRC Policy Statement on Technical Specification Improvements to the current River Bend Station Technical Specifications utilizing BWR Owners' Group (BWROG) report NEDO–31466, "Technical Specification Screening Criteria Application and Risk Assessment," (and Supplement 1) as incorporated in NUREG–1434.

The licensee has categorized the proposed changes into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, and less restrictive changes.

Administrative changes are those that involve reformatting, renumbering and rewording of the existing TS. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1434 and does not involve technical changes to the existing TS. Such changes are administrative in nature and do not impact initiators and analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components or variables that do not meet the criteria of inclusion in TS as identified in the Application of Selection Criteria to the River Bend Station TS. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the TS to administratively controlled documents. Changes to these documents will be made in accordance with 10 CFR 50.59. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are subject to 10 CFR 50.59 and subject to the change control provisions in the Administrative Controls Section of the TS. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems and components are maintained consistent with the safety analyses and licensing basis.

Changes characterized as less restrictive have been subdivided into four additional subcategories. They include:

a. Relocating Details to TS Bases, the Updated Safety Analysis Report (USAR), or Procedures.

The requirements to be transposed from the TS to the Bases, USAR or procedures are the same as those currently included in the existing TS. The TS Bases, USAR and procedures containing the relocated information are subject to 10 CFR 50.59 and are subject to the change control provisions in the Administrative Controls section of the TS.

b. Extension of Instrumentation Surveillance Test Intervals and Allowed Outage Times

The proposed changes affect only the STIs and AOTs and will not impact the function of monitoring system variables over the anticipated ranges for normal operation, anticipated operational occurrences, or accident conditions. However, the changes are expected to reduce the test related plant scrams and test induced wear on the equipment. General Electric Topical Reports GENE–770–06–1 and GENE–770–06–2 showed that the effects of these extensions of STIs and AOTs, which produced negligible impact, are bounded by previous analyses. Further, the NRC has reviewed these reports and approved the conclusions on a generic basis.

c. Relocation of Instrumentation Only Requirements (Which Provide No Post-Accident Function)

These requirements are part of the routine operational monitoring and are not considered in the safety analysis. Changes made to the Bases, USAR and procedures containing the relocated information will be made in accordance with 10 CFR 50.59 and are subject to the change control provisions in the Administrative Controls section of the TS. These proposed changes will not impose or eliminate any requirements.

d. Other Less Restrictive Changes

Additional changes that result in less restrictions in the TS are discussed individually in the licensee's submittal.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 23, 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 petitions 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 located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set

forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors:

(1) The nature of the petition'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 fifteen (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 fifteen (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 material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (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 Suzanne C. Black, Director, Project Directorate IV–2: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of the **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 Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes it technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 30, 1993, which is 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 room, located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 14th day of April 1994.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Acting Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–9609 Filed 4–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association; Mississippi Power and Light Company; Correction to Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

In notice document 94–8692 beginning on page 17404, in the issue dated Tuesday, April 12, 1994, make the following correction:

In the first paragraph, the last line reading "Claiborne County, Louisiana." correct to read "Claiborne County, Mississippi."

Dated at Rockville, Maryland this 14th day of April 1994.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–9611 Filed 4–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit Nos. 1 and 2); Exemption

I

On April 17, 1990, and April 6, 1993, the Commission issued Facility Operating Licenses Nos. NPF–87 and NPF–89 to Texas Utilities Electric Company (the licensee) for Comanche Peak Steam Electric Station, Unit Nos. 1 and 2 (CPSES), respectively. These licenses provided, among other things, that the facilities are subject to all rules, regulations and orders of the Commission.

II

Section 50.71(e)(3)(i) of Title 10 of the Code of Federal Regulations requires the licensees of nuclear power reactors to submit an Updated Final Safety Analysis Report (UFSAR). The UFSAR is defined as "a revision of the original FSAR [Final Safety Analysis Report] containing those original pages that are still applicable plus new replacement

pages." By letter dated October 14, 1993, the licensee requested an exemption from 10 CFR 50.71(e) that would eliminate the requirement to resubmit those original pages of the FSAR that are still applicable when submitting the UFSAR.

The licensee has maintained the FSAR current since the original FSAR submittal in 1978 to the present by issuing amendments to the FSAR, which contain new replacement pages, approximately every three months. The licensee has committed to maintain the FSAR using this process until the issuance of the UFSAR. The final amendment to the FSAR, containing only replacement pages, would convert the FSAR to the UFSAR. The amendment to convert the FSAR to the UFSAR would be submitted by February 2, 1995.

III

The staff has reviewed the licensee's request to eliminate the requirement to resubmit original pages to the FSAR that are still applicable with the UFSAR submittal for Comanche Park Steam Electric Station. The underlying purpose of 10 CFR 50.71(e) is to assure that the Updated Final Safety Analysis Report is updated to contain the latest material developed.

The Comanche Peak Steam Electric Station FSAR is approximately 7,500 to 8,000 pages of text and tables, and 1,500 to 2,000 sheets of figures. As the licensee has maintained the FSAR current by periodic amendments, the vast majority of this material does not require revision and the number of new replacement pages associated with the UFSAR submittal would be relatively small. Thus, the CPSES FSAR meets the intent of 10 CFR 50.71(e) for issuance of the UFSAR because it contains the latest material developed.

Therefore, an exemption is warranted since the licensee has maintained the FSAR in a manner that is consistent with the underlying purpose of issuing the UFSAR in accordance with 10 CFR 50.71(e).

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption. The application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee has maintained the Comanche Peak Steam Electric Station FSAR current and has committed to continue to do so in accordance with the rule.

Accordingly, the Commission hereby grants an exemption as described in Section III above from 10 CFR 50.71(e)(3)(i) of 10 CFR part 50 to not resubmit the original pages of the FSAR that are still applicable when the licensee submits its Updated Final Safety Analysis Report. Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (59 FR 16246).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 14th day of April 1994.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–9612 Filed 4–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Wisconsin Public Service Corporation, Kewaunee Nuclear Power Plant; Proposed Corporate Restructuring

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the proposed corporate restructuring of Wisconsin Public Service Corporation (WPSC), a co-owner and licensee for the Kewaunee Nuclear Power Plant (Kewaunee). By letter dated February 11, 1994, WPSC informed the Commission of a proposed corporate restructuring plan pursuant to which all of the outstanding common stock of WPSC will be exchanged for outstanding common stock of WPS Resources Corporation (WPS Resources). WPS Resources is currently a wholly-owned subsidiary of WPSC, but after the share exchange will be the parent holding company of WPSC. Under the restructuring, which is expected to be approved at the annual shareholders meeting on May 5, 1994, WPSC will continue to be a co-owner and the operator of Kewaunee and no transfer of any licenses or interests in Kewaunee will be effected.

Dated at Rockville, Maryland, this 14th day of April 1994.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–9608 Filed 4–20–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—20221; 812–8790]

Harbor Fund; Notice of Application

April 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Harbor Fund.

RELEVANT ACT SECTION: Order requested under sections 6(c) and 17(b) that would grant an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicant seeks an order to permit Owens-Illinois Master Retirement Trust (the "Retirement Trust"), a shareholder of the Fund who is an "affiliated person" of the Fund, to redeem Fund shares for payment in-kind.

FILING DATE: The application was filed on January 24, 1994, and amended on April 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 10, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One SeaGate, Toledo, Ohio 43666.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware business trust registered under the Act as an open-end management investment company. The Harbor Growth Fund (the "Fund"), one of eight investment portfolios of applicant, commenced operations on November 19, 1986. Harbor Capital Advisors, Inc. serves as the Fund's investment adviser and administrator, and is an indirect wholly-owned subsidiary of Owens-Illinois, Inc. Nicholas-Applegate Capital Management serves as subadviser to the Fund.

2. The Retirement Trust is organized and operated as an investment vehicle for several qualified pension plans maintained by Owens-Illinois and its affiliates. Assets of these pension plans are invested in one or more investment accounts of the Retirement Trust, and each investment account has a different investment objective. As of December 31, 1993, one of these accounts (the "Account") owned beneficially and of record 65% of the outstanding shares of the Fund. The Retirement Trust also includes another account, which is managed by Nicholas-Applegate, the investment objectives of which are substantially identical to those of the Fund.

3. Owens-Illinois, acting pursuant to its fiduciary obligation under the Employee Retirement Income Security Act of 1974, as amended, has concluded that the assets of the Account invested in the Fund should be consolidated with the Nicholas-Applegate account. Consequently, the Retirement Trust, on behalf of the Account, has advised the Fund that it expects, on a periodic basic over a three year period, to redeem approximately $36 million worth of its shares of the Fund and reinvest the proceeds in the Nicolas-Applegate account.

4. Applicant's prospectus and statement of additional information provide that redemption requests generally will be paid in cash. If, however, applicant's trustees determine that it would be detrimental to the shareholders of the Fund to pay a redemption price wholly or partly in cash, redemptions will be paid in-kind on a *pro rata* basis. The securities distributed in-kind would be valued by the same method as is used to calculate the Fund's net asset values per share. This method, in the case of securities traded on a public securities market for which quotations are available, is the last quoted sales price or, if there is no such reported sale, is at the mean between the bid and asked prices prior to valuation. Securities to be distributed to the Retirement Trust will be limited to securities that are traded on a public securities market or that have quoted bid and asked prices available.

5. Applicant requests an exemption to permit the Fund to effect the proposed in-kind redemptions. In order to reduce the impact of these redemptions upon the Fund and its shareholders, the trustees, in accordance with the Fund's redemption policies, propose to pay the first $250,000 of such redemptions in cash and cash equivalents and the remainder in the form of a proportionate distribution of each of the Fund's portfolio securities. These proposed in-kind redemptions will be effected only if the trustees determine that it would be detrimental to the shareholders of the Fund to pay the redemption price wholly or partly in cash.

Legal Analysis

1. Section 17(a)(2) of the Act generally makes it unlawful for an affiliated person of a registered investment company to purchase any securities from the company. Because the Retirement Trust holds 5% or more of the voting securities of the Fund, the Retirement Trust is an affiliated person of the Fund under section 2(a)(3)(A) of the Act. Consequently, the Retirement Trust would be prohibited from redeeming its shares of the Fund in-kind.

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that:

(a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching;

(b) The proposed transaction is consistent with the policies of the registered investment company involved; and

(c) The proposed transaction is consistent with the general provisions of the Act. Under section 6(c), the SEC may exempt classes of transactions if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant believes that the proposed transactions satisfy the requirements of sections 6(c) and 17(b). Applicant believes that the use of an objective, verifiable standard for the selection and valuation of any securities to be distributed in connection with a redemption in-kind will ensure that the redemptions will be on terms that are reasonable and fair to the Fund and its shareholders and will not involve overreaching on the part of any person. Similarly, the proposed transactions are consistent with the investment policy of the Fund, which expressly allows redemptions in-kind. Finally, because Retirement Trust shareholders would receive the same in-kind distribution of securities and cash as non-affiliated shareholders redeeming shares, applicant believes that the terms of the proposed transactions are reasonable and fair to all parties and are consistent with the protection of investors and the provisions, policies and purposes of the Act.

Applicant's Conditions

In-kind redemptions by the Retirement Trust, on behalf of the Account, will be effected subject to the following conditions:

1. The securities distributed to the Retirement Trust shareholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

2. The trustees, including a majority of the trustees who are not "interested persons" (as defined in section 2(a)(19) of the Act), will determine no less frequently than annually:

(a) Whether the In-Kind Securities have been distributed in accordance with condition 1; and

(b) whether the distribution of any In-Kind Securities was and continues to be consistent with the policies of the Fund as reflected in the prospectus of the Fund. In addition, the trustees shall make and approve such changes as they deem necessary in their procedures for monitoring compliance by the applicant with the terms and conditions of this application.

3. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any redemption in-kind by the Retirement Trust occurred, the first two years in an easily accessible place, a written record of each such redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9634 Filed 4–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20223; 812–8820]

Hartford Life Insurance company, et al.

April 15, 1994.

AGENCY: The Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Ivestment Company Act of 1940 (the "1940 Act").

APPLICANTS: Hartford Life Insurance Company ("Hartford Life"), Hartford Life Insurance Company/Putnam Capital Manager Trust Separate Account (the "Separate Account") and Hartford Equity Sales Company, Inc. ("HESCO"), collectively, the "Applicants."

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account which serves as the funding medium for certain deferred variable annuity contracts issued by Hartford Life (the "Contracts").

FILING DATE: The Application was filed initially on February 7, 1994, and subsequently amended on March 24, 1994, and April 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 10, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Kathleen A. McGah, Counsel, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTRACT: Patrice M. Pitts, Attorney, or Michael V. Wible, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 272–2060.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Hartford Life, a stock life insurance company, was incorporated in Massachusetts on June 5, 1902, and subsequently was redomiciled to Connecticut.

2. On June 22, 1987, the Board of Directors of Hartford Life established the Separate Account. The Separate Account issues only individual and group flexible premium tax deferred variable annuity contracts. The Separate Account consists of several subaccounts (the "Subaccounts"), each of which invests in certain underlying registered investment companies.

3. In December 1993, the Separate Account filed a Form N–4 to register interests of a new flexible premium contract to be funded by the Separate Account (the "New Contract").

4. HESCO will serve as the principal underwriter for the Contracts (including the New Contract). HESCO is registered with the Commission as a broker dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers.

5. Contract owners may allocate purchase payments to any one or more of the Subaccounts, to the fixed account (the "Fixed Account") which is part of the general account of Hartford Life, or to a combination of the Subaccounts and the Fixed Account.

6. A Contract owner may select one of four annuity options: life annuity; life annuity with 120, 180 or 240 monthly payments; joint and last survivor annuity; and payments for a designated period. Each annuity option provides for a series of annuity payments commencing on the annuity commencement date.

7. If upon death, prior to the annuity commencement date, the annuitant or the Contract owner, as applicable, had not attained his or her 90th birthday, the beneficiary of the Contract will receive the greatest of: (i) The Contract value determined as of the day written proof of death of such person is received by Hartford Life; (ii) 100% of the total purchase payments made to such Contract; or (iii) the maximum anniversary value [1] increased by the dollar amount of any purchase payments made and reduced by the dollar amount of any partial surrenders (commonly referred to as a "stepped up" death benefit). If the deceased, the annuitant or the Contract owner, as applicable, has attained age 90, the death benefit will equal the Contract value.

8. Contract Owners will not pay a sales charge at the time of purchase. However, a contingent deferred sales charge ("CDSC") may be assessed against Contract values when they are surrendered. The length of time from receipt of a premium payment to the time of surrender determines the contingent deferred sales charge. Purchase payments will be deemed to be surrendered in the order in which they are received and all surrenders will be first from purchase payments and then from other Contract values. The CDSC equals 6% the first year, 6% the second year, 5% the third year, 5% the fourth year, 4% the fifth year, 3% the sixth year, 2% the seventh year, and 0% the eighth year.

9. During the first seven Contract years, on a non-cumulative basis, a Contract owner may make a partial surrender of Contract values of up to 10% of the aggregate premium payments made to the Contract (as determined on the date of the requested withdrawal) without the application of the CDSC. After the seventh Contract year, the Contract owner may make a partial surrender of the greater of 10% of premium payments made during the seven years prior to the surrender, or 100% of the Contract value less the premium payments made during the seven years prior to the surrender, without the application of a CDSC.

10. Hartford Life will deduct from Contract value each year a daily administrative charge at the rate of .15% per annum. In addition, for Contracts with Contract value less than $50,000, Hartford Life will deduct from Contract value each year, on the Contract anniversary, a maintenance fee of $30. The annual maintenance fee is designed to reimburse Hartford Life for expenses relating to the administration and maintenance of a Contract and the Subaccounts.

11. The Applicants represent that none of the administrative charges may be increased during the life of the Contracts, and that the total revenues from all administrative charges under the Contracts are not expected to exceed

[1] The maximum anniversary value is equal to the greatest anniversary value attained as follows. The anniversary value is equal to the Contract value on a Contract anniversary (anniversary of the effective date of the Contract), increased by the dollar amount of any premium payments made since that anniversary and reduced by the dollar amount of any partial surrenders since that anniversary. As of the date of death, Hartford Life will calculate anniversary value for each Contract anniversary prior to the decedent's 81st birthday.

Hartford Life's average expected costs of administering the Contracts.

12. Hartford Life will deduct a daily charge at the rate of 1.25% per annum to compensate it for providing mortality and expense guarantees with respect to the Contracts. (The Applicants estimate that of the 1.25% charge, .90% is for mortality risk and .35% is for expense risk.)

13. The mortality risk arises, in large part, from Hartford Life's obligation: (i) to make monthly annuity payments, regardless of how long an annuitant may live, and regardless of how long annuitants as a group may live; and (ii) to pay the minimum death benefit under a Contract.

14. The expense risk is that the administrative fees assessed by Hartford Life will fail to meet the actual expenses incurred.

15. The Applicants represent that the mortality and expense risk charge will not increase. If the charge is insufficient to cover actual costs, the loss will fall on Hartford Life. Conversely, if the charge proves more than sufficient to meet actual experience, the excess will be a profit to Hartford Life and will become part of its general account surplus. Hartford Life expects to realize a profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Conclusions

1. The Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account which serves as a funding medium for the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. The Applicants represent that the charge for mortality and expense risks is reasonable in relation to the risks assumed by Hartford Life under the Contracts.

4. The Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. This representation is based upon Hartford Life's survey of comparable contracts issued by a large number of other insurance companies. Hartford Life will undertake to maintain and make available to the Commission upon request a memorandum outlining the methodology underlying this representation.

5. The Applicants represent that it is likely that the proceeds from sales loads will be insufficient to cover the expected costs of distributing the contracts. Any shortfall will be covered from the assets of the general account, which may include profit from the mortality and expense risk charge. Therefore, Hartford Life has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and Contract owners, and that it will maintain and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

6. The Applicants represent that the Separate Account will invest only in open-end management companies which, if they should adopt any distribution financing plan under Rule 12b–1 under the 1940 Act, will have a board of directors, a majority of whom are not interested persons of the open-end management company. Such board of directors must formulate and approve any such distribution plan.

Applicants' Conclusion

The Applicants assert that for the reasons set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct a mortality and expense risk charge under the Contracts meet the standards in Section 6(c) of the 1940 Act. The Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9635 Filed 4–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20220; International Series Release No. 650/812–7598]

The Irish Investment Fund, Inc.; Notice of Application

April 14, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The Irish Investment Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 10(f) from the provisions of that section.

SUMMARY OF APPLICATION: Applicant seeks a conditional order to permit it to purchase Irish securities during the existence of an underwriting syndicate in which affiliated persons of applicant's investment adviser participate as principal underwriters.

FILING DATES: The application was filed on September 25, 1990 and amended on November 14, 1991, May 13, 1992, and April 13, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 9, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Exchange Place, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Senior Attorney, at (202) 272–2190 or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representatives

1. Applicant, a Maryland corporation, is a registered closed-end management

investment company. Applicant's investment objective is long-term capital appreciation through investment primarily in equity securities of Irish companies. In normal circumstances, at least 65% of applicant's total assets will be invested in such securities. Applicant also may invest in equity and fixed-income securities of companies domiciled outside of Ireland that are likely to be affected by developments in the Irish economy or in Ireland's international economic relations and in certain fixed-income securities, including those issued by Irish companies or Irish government entities.

2. Bank of Ireland Asset Management Limited ("BIAM") serves as applicant's investment adviser. Under an investment advisory agreement, BIAM makes investment decisions on behalf of the Fund, prepares and makes available research and statistical data, and supervises the purchase and sale of securities by the applicant.

3. BIAM is an indirect wholly-owned subsidiary of the Governor and Company of the Bank of Ireland (the "Bank of Ireland") and therefore is an "affiliated person" of the bank within the meaning of section 2(a)(3) of the Act. The Bank of Ireland is the second largest bank in Ireland and, as permitted by Irish law, is frequently involved in underwritten public offerings of equity securities in Ireland.

Applicant's Legal Analysis

4. Section 10(f) of the Act prohibits a registered investment company from purchasing securities, during the existence of any underwriting or selling syndicate, any security a principal underwriter of which is an affiliated person of, among others, the investment adviser of such investment company. Because the Bank of Ireland is an affiliated person of applicant's investment adviser, applicant is prohibited from purchasing securities in underwritten public offerings in Ireland in which the Bank of Ireland participates as a principal underwriter.

5. Rule 10f–3 exempts a transaction from the provisions of section 10(f) if certain conditions are met. Subparagraph (a)(1) of rule 10f–3 requires that the securities purchased be part of an issue registered under the Securities Act of 1933 (the "Securities Act"). Unless the Irish securities are being offered publicly in the United States, they are not required to be registered under the Securities Act. Accordingly, most transactions in Irish securities cannot meet the above condition; however, applicant represents that it will be able to satisfy all of the other conditions of rule 10f–3. In addition, applicant submits that all securities purchased in Ireland under circumstances subject to section 10(f) will be purchased in public offerings conducted in accordance with Irish law and the rules and regulations of the Irish Stock Exchange; will be listed on the Official List (i.e., the First Market) of the Irish Stock Exchange;[1] and all subject Irish issuers will have available to prospective purchasers financial statements, audited in accordance with the accounting standards of Ireland, for the two years prior to the purchase.

6. An offering in Ireland will be considered a public offering under Irish law if it can properly be regarded, in all circumstances, as being calculated to result, directly or indirectly, in the offered securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise not being a domestic concern of the person making or receiving it.[2] Primary public offerings take the form of public subscriptions, rights issues or open offers with a clawback.[3] Secondary public offerings (i.e., offers to sell existing shares) take the form of public sales. Most new capital is raised on the Irish equity market through issuances of shares or rights by listed companies. Securityholders of Irish listed companies have preemptive rights. These securityholders, however, usually waive their preemptive rights on an annual basis to enable a nominal amount of shares to be issued on a non-preemptive basis. In the case of a large new issue, shareholder approval would be required in order to allot and issue new shares.

7. The public offering price is fixed at the time of initial issuance and published in the offering prospectus, and the securities offered to and purchased by affiliates of underwriters as part of a public offering will be offered and sold under the same terms as to the general public. With respect to a rights issue, applicant represents that the subscription price is fixed and is at a discount to the prevailing market price or at the market price. Applicant is aware of one unusual instance when the price was fixed at a premium to the market price. Applicant, however, will not purchase any securities that would be offered at such a premium to market price.

8. A public offering in Ireland is usually underwritten pursuant to an underwriting agreement in which the primary underwriters (as opposed to the sub-underwriters) commit to purchase any of the offered securities that are not taken up by existing shareholders (after a stated subscription period) or sub-underwriters. Typically, sub-underwriters irrevocably subscribe for a minimum portion of the issue at a fixed price. Applicant believes this underwriting arrangement effectively satisfies the "firm commitment" and "any/all" requirements of paragraph (a)(3) of rule 10f–3.[4]

9. Applicant represents that the number of subscribers participating in a public offering will vary depending on the nature of the existing trading market for an issuer's securities and other circumstances, either related to the status of the issuer or to general economic conditions. Generally, an offering will encompass approximately 20 institutional investors in each of Ireland and the United Kingdom, 20 other international institutional investors, and thousands of retail investors. The applicant is not aware of any instance where a public offering was not addressed to the entire investment community in Ireland.

10. Applicant states that securities purchased pursuant to the relief granted will be listed or approved for listing on the Official List (i.e., the First Market). To be listed on the First Market, a company must have capitalization of 700,000 Irish Pounds (or approximately $980,000), publish three years of financial results, and have at least 25% of its shares in public hands, i.e., held by other than affiliates of such company.

11. In addition to the above requirements, companies seeking to list on the Irish Stock Exchange must provide the exchange with a formal statement describing the company's business, management and financial condition. Companies listed on each of the markets also have ongoing reporting requirements which differ in extent according to the importance of the

[1] The Irish Stock Exchange is comprised of four markets—the main market or the "First Market," the Unlisted Securities Market, the Exploration Securities Market, and the Small Companies Market.

[2] The offer or invitation would be considered to be a domestic concern of the person receiving it if that person is a specific addressee, or if only that person can avail itself of such offer or invitation.

[3] An open offer with a clawback is a pre-emptive offer made to shareholders of the issuer inviting them to apply for shares. The shareholders are guaranteed a minimum allotment in proportion to their respective holdings. If any shareholder does not apply for his minimum allotment, the shares not taken are allotted to persons who committed to purchase the shares in the open offer.

[4] Rule 10f–3(a)(3) provides that the securities to be purchased are offered pursuant to an underwriting agreement under which the underwriters are committed to purchase all of the registered securities being offered, except those purchased by others pursuant to a rights offering, if the underwriters purchase any thereof.

market. For instance, companies listed on the First Market must submit condensed half-yearly statements and full annual statements together with reports of share purchases and sales by directors and significant changes in holdings by individual shareholders. This information is publicly available. Further, Irish law requires, with certain exceptions, any invitation to subscribe or purchase shares in a public offering be accompanied by a prospectus meeting the disclosure requirements set forth in the Third Schedule to the Irish Companies Act. Among other things, the Act requires the company to disclose its dividend record, profits and losses for the preceding five years. Under the Irish Companies Act, the listing requirements for companies on the First Market will be deemed to be, for all purposes of the Act, a "prospectus" and, therefore, the requirement to make Third Schedule disclosures does not apply to these companies. The disclosure required under the Irish Stock Exchange rules for a company on the First Market, however, is generally more onerous than that required under the Irish Companies Act. A notable exception to this rule is the First Market companies must provide accounts for the preceding three years rather than five years.

12. The Irish securities laws are essentially self-regulating and there is no central agency, except for the Irish Stock Exchange with respect to listed companies, with the specific responsibility of administering and enforcing the provision of Irish law described above. However, issuers are subject to civil claims and criminal prosecutions, including criminal prosecutions by the Director of Public Prosecutions (akin to the U.S. attorney General). In addition, issuers whose securities are listed on the Irish Stock Exchange are subject to regulation by the exchange and may be the subject of sanctions, such as suspension of trading or de-listing.

13. The only condition of rule 10f–3 that applicant cannot satisfy is the requirement that the securities to be purchased be effectively registered under the Securities Act. Applicant states that the registration requirement was designed to ensure that the investment company will purchase the securities at the public offering price (which ordinarily would not exist absent registration), that the securities are issued in the ordinary course of business, and that adequate disclosure is made with respect to the securities. Applicant believes that purchasing the securities at issue pursuant to a public offering conducted in accordance with Irish law and the rules and regulations of the Irish Stock Exchange, together with a requirement that audited financial statements for the previous two years be available to all prospective purchasers, provide an adequate substitute for the registration requirement. Applicant submits that the availability of the financial statements as well as the disclosure required under the Irish Companies Act and the rules and regulations of the Irish Stock Exchange provide BIAM with sufficient information to make informed investment decisions. Taken together with the requirement that securities subject to section 10(f) be purchased in accordance with Irish law and the rule and regulations of the Irish Stock Exchange, investors can be assured that the securities are issued in the "ordinary course of business."

14. Applicant further represents that the widespread distribution of securities in a public offering in Ireland, the applicable prospectus delivery requirements, the fixed offering price at which securities are offered and the fact that any such securities would be offered to and purchased by unaffiliated purchasers on the same terms as any securities purchased by applicant provide for the protection of investors.

15. In light of the foregoing, as well as the protection afforded by subparagraphs (a)(2) through (i) of rule 10f–3, applicant believes that purchases of securities in the manner described above will not raise any of the concerns addressed by section 10(f) and that the granting of the requested exemptive order is consistent with the protection of investors and with the purposes intended by the provisions of rule 10f–3.

Applicant's Conditions

Applicant requests an exemption from section 10(f) of the Act to the extent necessary to permit purchases of securities in underwritten offerings in Ireland in which affiliated persons of applicant's principal investment adviser participate as principal underwriters, subject to the conditions that:

1. The securities purchased be listed or be approved for listing on the Official List (i.e., on the First Market) of the Irish Stock Exchange;

2. With the exception of paragraph (a)(1) of rule 10f–3, all other conditions set forth in rule 10f–3 be satisfied;

3. The foreign securities subject to section 10(f) will be purchased in a public offering conducted in accordance with Irish law and the rules and regulations of the Irish Stock Exchange; and

4. All subject Irish issuers will have available to prospective purchasers financial statements, audited in accordance with the accounting standards of Ireland, for the two years prior to the purchase.

For the Commission, by the Division of Investment Management under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9581 Filed 4–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20219; 812–8822]

ITT Hartford Life and Annuity Insurance Company, et al.

April 14, 1994.

AGENCY: The Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: ITT Hartford Life and Annuity Insurance Company ("ITT Hartford"), ITT Hartford Life and Annuity Insurance Company/Separate Account One (the "Account") and Hartford Equity Sales Company, Inc. ("HESCO") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Account which serves as the funding medium for certain flexible premium deferred variable annuity contracts issues by ITT Hartford (the "Contracts").

FILING DATE: The application was filed on February 7, 1994. Amendment number one to the application was filed on March 28, 1994 and amendment number two to the application was filed on April 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 9, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request

notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Kathleen A. McGah, Counsel, Hartford Life Insurance Companies, 200 Hopmeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Michael V. Wible, Special Counsel, Office of Insurance Products, Division of Investment Management, both at (202) 272–2060.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. ITT Hartford is a stock life insurance company domiciled in Wisconsin. On May 20, 1991, the board of directors of ITT Hartford established the Account. The Account serves as the funding medium for the Contracts and consists of several subaccounts (the "Subaccounts"), each of which invests in certain underlying registered investment companies.[1]

2. HESCO, the principal underwriter for the Contracts, is registered with the Commission as a broker dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers.

3. Owners of the Contracts may allocate purchase payments to one or more of the Subaccounts, to the fixed account (the "Fixed Account") which is part of the general account of ITT Hartford, or to a combination of the Subaccounts and the Fixed Account.

4. A Contract owner may select an annuity option on either a fixed or variable basis and may select one of four annuity options: Life annuity; life annuity with 120, 180 or 240 monthly payments certain; joint and last survivor annuity; and payments for a designated period. Each annuity option provides for a series of annuity payments beginning on the annuity commencement date.

5. If upon death, prior to the annuity commencement date, the annuitant or the Contractor owner, as applicable, had not attained his or her 90th birthday, the beneficiary of the Contract will receive the greatest of:

(a) The Contract value determined as of the day written proof of death of such person is received by ITT Hartford;

(b) 100% of the total purchase payments made to such Contract, reduced by any prior surrenders; or

(c) The maximum anniversary value[2] increased by the dollar amount of any purchase payments made and reduced by the dollar amount of any partial surrenders (commonly referred to as a "stepped up" death benefit). If the deceased, the annuitant or the Contract owner, as applicable, had attained age 90, the death benefit will equal the Contract value.

6. A contingent deferred sales charge (the "Sales Charge") may be assessed against Contract values upon surrender. The length of time from receipt of a premium payment to the time of surrender determines the Sales Charge. Purchase payments will be deemed to be surrendered in the order in which they are received and all surrenders will be deemed made first from purchase payments and then from other Contract values.

7. The Sales Charge is 6% the first and second years, 5% the third and fourth years, 4% the fifth year, 3% the sixth year, 2% the seventh year, and 0% the eighth year. During the first seven Contract years, on a non-cumulative basis, a Contract owner may make a partial surrender of Contract values up to 10% of the aggregate premium payments made to the Contract (as determined on the date of the requested withdrawal) without application of the Sales Charge. After the seventh Contract year, the Contract owner may make a partial surrender of the greater of 10% of premium payments made during the seven years prior to the surrender, or 100% of the Contract value less the premium payments made during the seven years prior to the surrender, without application of a Sales Charge.

8. ITT Hartford will deduct an annual maintenance fee of $30 from each Contract to reimburse ITT Hartford for expenses relating to administration and maintenance of the Contract and the Subaccounts. There is no charge for Contracts with more than a $50,000 Contract value on the Contract anniversary. The application states that the annual maintenance fee may not be increased during the life of the Contracts. Applicants further state that total revenues from the annual maintenance fees under the Contracts are not expected to exceed ITT Hartford's average expected costs for administering the Contracts.

9. ITT Hartford will deduct a daily charge at the rate of 1.25% annually to compensate it for providing mortality and expense guarantees with respect to the Contracts. Applicants estimate that 0.90% of the 1.25% charge is for mortality risk and 0.35% is for expense risk.

10. Applicants state that the mortality risk arises from the obligation of ITT Hartford to: (a) make monthly annuity payments, regardless of how long an annuitant may live and regardless of how long annuitants as a group may live; and (b) pay the minimum death benefit under a Contract.

11. Applicants state that the expense risk assumed by ITT Hartford is the risk that the administrative fees assessed by ITT Hartford will be insufficient to cover actual expenses.

12. Applicants represent that the mortality and expense risk charge will not increase. If the charge is insufficient to cover actual costs, the loss will fall on ITT Hartford. Conversely, if the charge proves more than sufficient to meet actual expenses, the excess will be profit to ITT Hartford and will be available for any proper corporate purpose. Applicants state that ITT Hartford expects a reasonable profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Conclusions

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction of a mortality and expense risk charge from the assets of the Account.

2. Sections 26(a)(2)(C) and 27(c)(2), in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certifications unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants represent that the mortality and expense risk charge is

[1] In December of 1993, a registration statement on Form N–4 was filed with the Commission to register the Contracts. As of the date of this notice, the registration statement had not yet been declared effective.

[2] The maximum anniversary value is equal to the greatest anniversary value attained as follows. The anniversary value is equal to the Contract value on a Contract anniversary (anniversary of the effective date of the Contract), increased by the dollar amount of any premium payments made since that anniversary and reduced by the dollar amount of any partial surrenders since that anniversary. As of the date of death, ITT Hartford will calculate an anniversary value for each Contract anniversary prior to the deceased's attain age 81.

reasonable in relation to the risks assumed by ITT Hartford under the Contracts.

4. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. Applicants state that this representation is based upon a survey of comparable contracts issued by a large number of other insurance companies. The application states that ITT Hartford will undertake to maintain and make available to the Commission upon request a memorandum setting forth in detail the methodology and the contracts of other insurance companies underlying this representation.

5. Applicants represent that ITT Hartford has concluded that there is the likelihood that the proceeds from sales loads will be insufficient to cover the expected costs of distributing the contracts. Applicants state that any shortfall will be covered from the assets of the general account, which may include profit from the mortality and expense risk charge. ITT Hartford has concluded that there is a reasonable likelihood that the Account's distribution financing arrangement will benefit the Account and Contract owners. Applicants further state that ITT Hartford undertakes to maintain and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

6. Applicants represent that the Account will invest only the open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b–1 of the 1940 Act to finance distribution expenses.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9582 Filed 4–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26027]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 15, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declarant(s) should submit their views in writing by May 9, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact of law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Narragansett Energy Resources Company (70–8383)

Narragansett Energy Resources Company ("Resources"), 280 Melrose Street, Providence, Rhode Island 02901, a subsidiary company of New England Electric System ("NEES"), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

By orders dated October 13, 1988 and December 23, 1988 (HCAR Nos. 24727 and 24790), the Commission authorized, among other things:

(1) Resources to acquire a 20% equity interest in the Ocean State Power Project ("OSP");

(2) NEES to fund Resources' obligation to contribute to the capital of OSP under the OSP partnership agreement and guarantee such obligation; and

(3) The construction financing of OSP.

Resources now proposes to refinance a portion of its outstanding common equity by issuing, through December 31, 1994, long-term notes, under an exception from the competitive bidding requirements pursuant to Rule 50(a)(5), up to an aggregate principal amount of $30 million ("Note"). As of December 31, 1993, total capitalization of Resources was approximately $40 million, 100% of which was in the form of common equity.

The Note will have a maturity of up to 17 years from the time of issuance and will bear interest at a fixed rate not to exceed 12% per annum. The note will be issued pursuant to a note agreement ("Agreement"). The Agreement may provide for a sinking fund and limitations on callability or refundability, depending upon market conditions. Resources proposes that the Note will be redeemable at any time at its option, upon reasonable notice, at the then outstanding principal amount plus accrued interest and redemption premium, and may include a yield to maturity premium. Resources requests authorization to begin negotiations regarding the issuance of the Notes. It may do so.

The proceeds from the issuance and sale of the Note will be used for the retirement of subordinated notes issued by Resources to NEES in order to fund Resources' equity contribution obligation to the OSP units.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9636 Filed 4–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20222; 812–8916]

WNC California Housing Tax Credits IV, L.P., Series 4 Through 9, and WNC California Tax Credit Partners IV, L.P.; Notice of Application

April 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: WNC California Housing Tax Credits IV, L.P. Series 4, WNC California Housing Tax Credits IV, L.P., Series 5, WNC California Housing Tax Credits IV, L.P., Series 6, WNC California Housing Tax Credits IV, L.P., Series 7, WNC California Housing Tax Credits IV, L.P., Series 8, WNC California Housing Tax Credits IV, L.P., Series 9 (individually, a "Series," and collectively, the "Fund") and WNC

California Tax Credit Partners IV, L.P. (the "General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATE: The application was filed on March 30, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 10, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 5th Street NW., Washington, DC 20549. Applicants, 3158 Redhill Avenue, suite 120, Costa Mesa, California 92626–3416.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Series was formed as a California limited partnership on March 11, 1994. Each Series will operate as a "two-tier" partnership, i.e., each Series, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships"). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986.

2. The objectives of each Series are to (a) provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal and California income tax liabilities, (b) preserve and protect its capital, and (c) provide cash distributions from sale or refinancing transactions.

3. On March 28, 1994, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicly, in one or more series of offerings, 50,000 units of limited partnership interest ("Units") at $1,000 per unit. The minimum investment will be five Units. Purchasers of the Units will become limited partners ("Limited Partners") of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings, and automobiles), of at least $60,000 and an annual gross income of at least $60,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $175,000. Units will be sold only to investors who meet these suitability standards, or more restrictive suitability standards as may be established by certain states for purchases of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in the profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest. In these cases, the Series normally will acquire at least a 50% interest in the profits, losses, and tax credits of the Local Limited Partnership. From 95% to 100% of the proceeds from a sale or refinancing of an apartment complex normally will be paid to the Series until it has received a full return of that portion of the net proceeds invested in the Local Limited Partnership (which may be reduced by any cash flow distributions previously received). A Series also will receive a share of any remaining sale or refinancing proceeds. A Series' share of these proceeds may range from 10% to 90%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. The Partnership Agreement and prospectus of the Series contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. While the fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length, applicants believe that the compensation is fair and on terms no less favorable to the Series that would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a nonaccountable expense reimbursement equal to 2% of capital contributions. The General Partner also will be reimbursed by such Series for the actual amount of expenses incurred in connection with organizing the Series and conducting the offering. However, the General Partner has agreed to pay any organization and offering expenses (including selling commissions and the

nonaccountable expense reimbursement) in excess of 15% of capital contributions.

10. During the acquisition phase, each Series will pay the General Partner or its affiliates a selection fee equal to 8% for analyzing and evaluating potential investments in Local Limited Partnerships. The General Partner and its affiliates will be reimbursed by each Series for the actual amount of any partnership acquisition expenses advanced by them, provided that acquisition expenses will not exceed 1.2% of capital contributions. Aggregate acquisition fees and acquisition expenses paid in connection with the acquisition of Local Limited Partnership interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administrators Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to a Series be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 1% of any cash available for distribution and each Series may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of each Series in connection with each Local Limited Partnership in which the Series invests. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as to the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 1% of profits and losses of each Series for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the Limited Partners, each Series will pay the General Partner or its affiliates a fee equal to 1% of the sales price of the properties sold in which the General Partner or its affiliates had provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds remaining after the return of the Limited Partners' capital contribution, subject to certain prior payments.

13. All proceeds from any Series of the public offering of Units initially will be placed in an escrow account with the National Bank of Southern California ("Escrow Agent"). Pending release of offering proceeds to an individual Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escrow will be released to an individual Series and held by it pending investment in Local Limited Partnerships.

14. If investment opportunities may be invested in by more than one entity that the General Partner or its affiliates advises or manages, the decision as to the particular entity which will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, each Series and any other partnerships formed to invest primarily in apartment complexes eligible for California and Federal low income housing credits will be given priority with respect to any investment that is eligible for California low income housing credits.

Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be "investment companies" under sections 3(a)(1) or 3(a)(3) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under section 6(c) from all provisions of the Act.

2. Section 3(a)(1) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities.

3. Section 3(a)(3) of the Act provides that an issuer is an "investment company" if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items).

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnerships.[1] The release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for an exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

5. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units comparable to that provided by the Act.

6. Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets these standards.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9637 Filed 4–20–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1992]

United States International Telecommunications Advisory Committee; Radiocommunication Sector Task Group 10/5; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Task Group 10/5, will meet on May 12, 1994, 9:30 a.m. to 12 noon in room 1406 at the U.S. Department of State, 2201 C Street NW., Washington, DC 20520.

WARC–79 expanded the HF broadcasting bands by approximately 33%. WARC–92 extended the bands by

[1] Investment Company Act Release No. 8456 (Aug. 9, 1974).

an additional 25% to be available by 1 April 2007, for single-sideband emissions. However, in the absence of planning procedures, the spectrum allocated in 1979 and in 1992 has not and will not become available although congestion in the HF bands has continued to increase. In November 1993, the Radiocommunication Assembly adopted a new Question that concerns the development of alternative planning procedures. In March 1994, Study Group 10 (Sound Broadcasting) established Task Group 10/5, Technical Parameters and Planning Procedures for HF Broadcasting, to conduct the required studies.

This initial meeting of U.S. Task Group 10/5 will begin preparations for the international meeting scheduled for October 31 to November 3, 1994. The meeting will consider the existing planning approach; the improved HFBC planning system; possible new planning procedures; the principles, procedures and associated technical parameters for the future planning procedure and any other matters within the competence of this Task Group.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the Chairwoman, Ms. Giselle Gomez, (202) 619–1760. Those persons who wish to attend please call (202) 647–0201—(fax (202) 647–7407) and leave name, social security number and date of birth not later than 5 days before the meeting. Enter from the "C" Street Main Lobby. A picture ID will be required for admittance.

Dated: April 11, 1994.

Warren G. Richards,

Chairman, U.S. ITAC for ITU–Radiocommunication Sector.

[FR Doc. 94–9643 Filed 4–20–94; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 1990]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Carriage of Dangerous Goods; Meeting

The Working Group on Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 1 p.m. on May 10, 1994, in the Arlington Room, Third Floor, at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. The purpose of the meeting is to discuss the outcome of the 45th Session of the Subcommittee on the Carriage of Dangerous Goods (CDG) of the International Maritime Organization (IMO) which was held January 10–14, 1994, at the IMO Headquarters in London. In addition, initial plans and preparations for the 46th session (CDG 46) and other topics of interest, including the requirement for a container packing certificate, will be addressed.

The agenda items of particular interest are:

a. Amendments to the International Maritime Dangerous Goods (IMDG) Code.

b. Implementation of the IMDG Code.

c. Development of new glossary and illustrations of packagings for Annex I to the IMDG Code.

d. Amendments to the Emergency Procedures for Ships Carrying Dangerous Goods (EmS) and the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).

e. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended, and amendments to the IMDG Code to cover pollution aspects.

f. Risk analysis of on-deck stowage of marine pollutants and recommendations for the revision of relevant stowage provisions in the IMDG Code.

g. Matters relating to SOLAS regulations II–2/53 and 54.

h. Ships' stores of a hazardous nature.

i. Guidelines for the development of shipboard emergency plans for marine pollutants.

j. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

k. Revision of the Recommendations on the Safe Transport, Handling and Storage of Dangerous Substances in Port Areas.

l. Review of existing ships' safety standards.

m. Role of the human element in maritime casualties.

n. Use of radio beacons on containers and packages.

o. Requirement for a container packing certificate.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander K. J. Eldridge, U.S. Coast Guard (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–1217.

Dated: April 12, 1994.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–9646 Filed 4–20–94; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: Notice of calculation and interest.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts and refunds of Customs duties. For the quarter beginning April 1, 1994, the rates will be 6 percent for overpayments and 7 percent for underpayments. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: John V. Accetturo, National Finance Center, Revenue Accounting Branch, (317) 298–1308.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less, and fluctuate quarterly. The rates effective for a quarter are determined during the first-month period of the previous quarter.

The rates of interest for the period of April 1, 1994–June 30, 1994, are 6 percent for overpayments and 7 percent for underpayments. These rates will remain in effect through June 30, 1994, and are subject to change on July 1, 1994.

Dated: April 13, 1994.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 94–9584 Filed 4–20–94; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities: Exchange Programs To Promote the Strengthening of the Rule of Law in Africa Through the Development of Law Schools and Bar Associations

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the Bureau of Educational and Cultural Affairs announces a competitive grants program for nonprofit organizations to develop two separate initiative grant projects on the theme of rule of law for audiences in selected African countries. One project will involve exchanges with law schools in Eritrea, Ethiopia, Ghana, Kenya, Malawi, Tanzania, Uganda and Zambia; the second project will focus on bar associations in Ghana, Kenya, Tanzania and Uganda. Interested organizations are welcome to submit proposals for one or both projects. USIA is particularly seeking projects linking American legal institutions with partners in Africa.

BACKGROUND: Many African countries are striving to create and institutionalize more democratic polities by establishing multi-party systems, writing new constitutions, holding free elections, creating new legal systems and making a variety of political and economic reforms. The highest priority of U.S. embassies in Africa is supporting democratization, of which one crucial aspect is the growth of strong legal systems and legal institutions firmly committed to the rule of law.

The two projects described in this announcement are intended to engage American legal institutions, particularly law schools and bar associations, in working with African counterparts to strengthen the legal institutions essential to an enduring democratic society. By establishing long-term linkages among like institutions in the U.S. and Africa, these projects will increase the capacity of the African law schools and bar associations to play leadership roles in the democratization process.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NUMBER: This announcement number is E/P–94–27. Please refer to the title given above and this number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC, time on June 24, 1994. Faxed documents will not be accepted, nor will documents postmarked June 24, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by this deadline. Grant activity should begin after October 1, 1994.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: E/P–94–27, Office of Grants Management (E/XE), 301 Fourth Street, SW.—room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), room 224, USIA, 301 Fourth Street SW., Washington, DC 20547, tel. (202) 619–5319, fax (202) 619–4350, to request detailed application packages which include all necessary forms and guidelines for preparing proposals, including specific budget preparation.

SUPPLEMENTARY INFORMATION:

African Law School Exchange

USIA will accept proposals designed to develop a two-way exchange program to strengthen legal education in Eritrea, Ethiopia, Ghana, Kenya, Malawi, Tanzania, Uganda and Zambia, and to foster linkages between law schools in the U.S. and these countries. The amount requested from USIA should not exceed $200,000, of which $30,000 must be devoted to developing or purchasing specialized support materials for participating African institutions. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Project Themes and Objectives

1. Provide an introduction to the American legal system and the principles upon which it is based, particularly the rule of law;

2. Examine the role of law schools within the U.S. legal system as well as the role of the bar and the judiciary in legal education;

3. Provide for intensive firsthand observation of the operations of American law schools, with special emphasis on teaching, research, library development and curriculum development;

4. Establish long-term linkages between individual African and U.S. law schools to foster dialogue on issues of common concern and to enhance the institutional capabilities of the African law schools;

5. Develop and/or purchase specialized support materials for participating institutions in each of the target countries. Grant funds of no less than $30,000 must be used for this purpose. Such materials might include but are not limited to law library reference and research books, textbooks or other instructional audiovisual materials.

Participants

The African participants will be law school deans, administrators and professors nominated through coordination with U.S. Information Service personnel in the target countries and USIA. All participants must have strong English-language skills.

The U.S. participants will be selected by the grantee institution in consultation with USIA and U.S. Information Service personnel. The grantee should provide the names of American participants and brief, relevant biographical data. American participants should be selected on the basis of their experience and expertise in the thematic field. Experience in communicating to foreign audiences and general knowledge of Africa and of the countries involved in the project are highly desirable.

The USIS offices will facilitate the issuance of visas and other program-related materials.

Recommended Program Structure

The following suggestions should not serve as a blueprint, but as a stimulus for the development of an original program design.

Phase One: The program might begin with a three- to four-week U.S. study tour for a group of African law school deans and administrators representing the target countries, perhaps one dean and/or one administrator per country. The total number of African participants in this phase should be approximately

12–14. The study tour should include the following components:

—An orientation to the U.S. legal system and the Constitution on which it is founded. This segment should include professional meetings and field visits to legal institutions such as courts, lawyers associations, and judicial or lawyer training organizations;

—Extended visits to one or more U.S. law schools interested in establishing linkages with African counterparts. Participants should spend at least several days at each law school in order to study their operations in depth and to work with American counterparts on developing plans for continued exchanges. In order to maximize opportunities for linkages, the grantee may wish to divide the group into teams of 2–4 persons, matching each team with a different American law school;

—A concluding session to evaluate the study tour, make plans for the follow-up visit of American specialists to Africa, and discuss prospects for joint activities with U.S. law schools.

Phase Two: American legal experts would travel to each of the target countries for consultations, workshops or other activities with local counterparts on such issues as the operation and role of law schools in a democratic system, curriculum development, and/or other topics of mutual interest. Ideally, each African law school will receive a visit from a specialist associated with an American law school participating in Phase One; thus these follow-up visits will serve to foster long-term relationships between individual law schools in Africa and the U.S. In planning these visits the grantee should work closely with U.S. Information Service personnel in the target countries to ensure that the activities are carefully tailored to meet the needs of the individual African law schools.

Phase Three: African law educators or administrators would travel to the U.S. for three to four weeks to work with American partner law schools on developing practical collaborative projects.

African Bar Association Development Program

USIA will accept proposals for a two-way exchange project to foster the development of professional bar associations in Ghana, Kenya, Tanzania, and Uganda, and to promote linkages between bar associations in the U.S. and these countries. The amount requested from USIA should not exceed $170,000, of which $10,000 must be devoted to developing or purchasing specialized support materials for participating African institutions. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Project Objectives

1. Study the organizational structure and administration of U.S. bar associations, including their thematic committee systems;

2. Examine the advocacy role of professional bar associations in the U.S. and identify appropriate parallel roles for African bar associations;

3. Examine the outreach role of bar associations in the U.S. in such areas as legal aid and public legal education, and identify appropriate parallel roles for African bar associations;

4. Develop strategies for professional bar associations to protect the independence of the judiciary and the principles of due process and equal protection under the law;

5. Open a dialogue on establishing codes of ethical conduct for the legal profession in Africa;

6. Establish linkages among African and U.S. bar associations to foster dialogue on issues of common concern and to enhance the African bar associations' institutional capabilities;

7. Develop and/or purchase specialized support materials for participating African institutions. Grant funds of no less than $10,000 must be used for this purpose. Such materials may include but are not limited to legal texts and research volumes, training videos and/or other instructional materials.

Participants

The African participants will be attorneys and law professors active in the bar associations/law societies of their countries. It may be opportune to include leaders of women lawyers associations in countries where such organizations exist. Participants will be nominated through coordination among the African partner institutions, U.S. Information Service personnel in the target countries, and USIA. All participants must have strong English-language skills.

The U.S. participants will be selected by the grantee institution in consultation with USIA and U.S. Information Service personnel. The grantee should provide the names of American participants and brief, relevant biographical data. American participants should be selected on the basis of their experience and expertise in the thematic field. Experience in communicating to foreign audiences and general knowledge of Africa and of the countries involved in the project are highly desirable.

The USIS offices will facilitate the issuance of visas and other program-related materials.

Program Structure

The following suggestions should not serve as a blueprint, but as a stimulus for the development of an original program design.

Phase One: The program might begin with a three- to four-week U.S. study tour for approximately 12 attorneys and law professors representing the target countries, focusing on the activities of national and state bar associations. The grantee institution would develop a program for the participants to observe how bar associations and other legal groups support equal protection under the law, perform community service and promote standards of legal conduct. Participants might also meet with faculty members at leading law schools, representatives of advocacy groups, and community leaders. The African participants and the grantee institution would also develop the framework for institutional linkages between African bar associations and American counterpart institutions at the national, state or local level.

Phase Two: U.S. legal specialists, particularly representatives of U.S. bar associations which participated in Phase One, would travel to the target countries to conduct consultations and workshops with members of professional bar associations and other legal professionals. These activities should be designed to strengthen the bar associations' institutional capabilities and promote development of standards professional conduct. Discussions should also examine methods whereby legal professionals can contribute to political and economic liberalization in the target countries, and ways to further collaboration between African bar associations and counterpart organizations in the U.S.

In planning these visits, the grantee should work closely with U.S. Information Service personnel in the target countries to ensure that the activities are carefully tailored to meet the needs of the individual African countries.

Phase Three: Bar association leaders from the target countries would undertake internship or professional attachments with counterpart associations in the U.S. Each internship would be tailored to the particular interests and needs of the African bar association, whether in the area of

operations, government relations, public service, or other fields of mutual interest.

Additional Guidelines and Restrictions

USIA is interested in supporting programs which will lay the groundwork for new and continuing relationships between American and African legal institutions, especially law schools and bar associations. Proposals which are overly ambitious and those which are very general will not be competitive. Therefore, institutions should provide strong evidence of their ability to accomplish a few tasks exceptionally well.

Bureau grants are not given to support projects whose focus is limited to technical issues, or for research projects, developing publications for dissemination in the United States, individual student exchanges, film festivals, or exhibits. Neither does the Office of Citizen Exchanges provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register** and may have different application requirements as well as different objectives.

Programmatic Considerations

Pursuant to the legislation authorizing the Bureau of Educational and Cultural Affairs, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life.

USIA will give priority to proposals from U.S. organizations with relevant institutional contacts in the target countries. Partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing and transportation, interpreting, translating and other local-currency costs. These institutions are also encouraged to assist with the organization of various program activities.

The grantee will be responsible for most arrangements associated with this program. These include selecting speakers, themes, and topics for discussion; organizing a coherent progression of activities; making all arrangements associated with the African follow-up portion of the program; providing international and domestic travel arrangements for all participants; making lodging and local transportation arrangements for visitors; orienting and debriefing participants; preparing any necessary support materials; and working with host institutions and individuals to achieve maximum program effectiveness.

At the start of the U.S. portion of a program, the grantee should conduct an orientation session for the visiting delegation which addresses substantive details of the program as well as geographic, historical, and cross-cultural factors which they should consider to enhance program success.

At the conclusion of each phase, the grantee institution will conduct participant evaluations and submit to E/P a progress report. Upon conclusion of the program the grantee will be required to submit a report to E/P summarizing results of the entire program including project outcomes, anticipated follow-on activities, and any resulting institutional linkages.

Grantee institutions should try to maximize cost-sharing in all facets of their program design, and to stimulate U.S. private sector (foundation and corporate) support. Per diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a nonprofit grantee institution which receives funds from corporate or other cosponsors should then use those monies to provide food, lodging, and pocket money for the participants. In no case could the intern receive a wage or be hired by the sponsoring institution. Internships should also have an American studies/values orientation component at the beginning of the exchange program in the U.S. Proposals incorporating internships will be more competitive if letters committing prospective host institutions to supporting these efforts are provided.

Program monitoring and oversight will be provided by appropriate USIA elements.

Finding

Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

Competition for USIA funding support is keen. The final selection of a grantee institution will depend on assessment of proposals according to the review criteria delineated below.

While applicants must provide an all-inclusive budget with the proposal, they are also encouraged to include separate sub-budgets for each program component, phase, location or activity.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

USIA will consider funding the following project costs:

1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. *Per diem:* For the U.S. program, organizations have the option of using a flat $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities. NOTE: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities overseas, the Standard Government Travel Regulations per diem rates must be used.

3. *Book and cultural allowance:* Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not get these benefits.

4. *Consultants:* May be used to provide specialized expertise or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

5. *Room rental:* generally should not exceed $250 per day.

6. *Materials Development:* Proposals may contain costs to purchase, develop and translate materials for participants, in addition to the specialized support materials to be provided to African institutions. USIA reserves the rights to these materials for future use.

7. *One working meal per project:* Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

8. *Return travel allowance:* $70 for each participant which is to be used for

incidental expenditures incurred during international travel.

9. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please note: All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the appropriate geographic area offices and the budget and contract offices. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea

Proposals should exhibit originality, substance, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. Institutional Reputation and Ability

Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG) will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

3. Project Personnel

The thematic and logistical expertise of project personnel should be relevant to the proposed program. Résumés or C.V.s should be relevant to the specific proposal and no longer than two pages each.

4. Program Planning

A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. Thematic Expertise

Proposal should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

6. Cross-Cultural Sensitivity and Area Expertise

Evidence should be provided for sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/countries.

7. Ability To Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. Multiplier Effect

Proposed programs should strengthen long-term mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. Cost-Effectiveness

Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

11. Follow-on Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. Project Evaluation

Proposals should include a plan to evaluate the activity's success. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 5, 1994. Awarded grants will

be subject to periodic reporting and evaluation requirements.

Dated: April 18, 1994.

Barry Fulton,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–9669 Filed 4–20–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Claim for Repurchase of Loan, VA Form 26–8084

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before May 23, 1994.

Dated: April 11, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Claim for Repurchase of Loan, VA Form 26–8084.

2. The form is used and completed by the holder of a delinquent vendee account which has been guaranteed by VA. The holder may request VA to repurchase a loan.

3. Businesses or other for-profit.

4. 994 hours.

5. 30 minutes.

6. On occasion.

7. 1,988 respondents.

[FR Doc. 94–9595 Filed 4–20–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Enrollment Certification (Under Chapters 30, 32, or 35, Title 38, U.S.C. or Chapter 106, Title 10, U.S.C.), VA Form 21–1999, 22–1999–1, and 22–1999–2

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before May 23, 1994.

Dated: April 11, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Revision

1. Enrollment Certification (Under Chapters 30, 32, or 35, Title 38, U.S.C. or Chapter 106, Title 10, U.S.C.), VA Form 21–1999, 22–1999–1, and 22–1999–2.

2. The forms are used by schools and employees to report the enrollment of veterans, servicepersons, reservists, and other eligible persons in approved programs of education or training. The information requested is necessary to determine the correct rate of payment.

3. Individuals or households—Businesses or other for-profit—Non-profit institutions—Small businesses or organizations.

4. 128,873 hours.

5. 10 minutes.

6. On occasion—School term or semester.

7. 7,435 respondents.

[FR Doc. 94–9596 Filed 4–20–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Manufactured Home Appraisal Report, VA Form 26–8712

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before May 23, 1994.

Dated: April 11, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Manufactured Home Appraisal Report, VA Form 26–8712.

2. The form is used by VA fee and staff appraisers to establish the reasonable value of used manufactured home units proposed for financing and in the event of foreclosure, to ascertain the value of units for resale purposes.

3. Individuals or households—Businesses or other for-profit—Small businesses or organizations

4. The actual burden hours per year is 2,100. However, the requirement for appraisal reports is a common practice in the housing industry. One hour is requested for reporting purposes.

5. 1½ hours.

6. On occasion.

7. 1,400 respondents.

[FR Doc. 94–9594 Filed 4–20–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Trainee Request for Leave—Chapter 31, Title 38, U.S.C., VA 28–1905h

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before May 23, 1994.

Dated: April 11, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Trainee Request for Leave—Chapter 31, Title 38, U.S.C., VA 28–1905h.

2. VA needs the information which the veteran and trainer or authorized school official provide on this form to properly evaluate a request for leave of absence from participation in the Vocational Rehabilitation Program. This collection of information assures an accurate accounting of leave taken and allows VA to monitor the veteran's progress in the planned program of training and services.

3. Individuals or households.

4. 7,500 hours.

5. 15 minutes.

6. On occasion.

7. 30,000 respondents.

[FR Doc. 94–9597 Filed 4–20–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 77
Thursday, April 21, 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).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 F.R. 14957.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, April 26, 1994.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has changed the date of the open meeting to discuss Proposed Rules on Simplication of Pool Disclosure and a Quarterly Review, 2nd Quarter FY 1994 to 10:00 a.m., Thursday, May 5, 1994.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–9844 Filed 4–19–94; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 F.R. 14957.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:45 a.m., Tuesday, April 26, 1994.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has changed the date of the meeting to discuss enforcement matters to 10:45 a.m., Thursday, May 5, 1994.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–9843 Filed 4–19–94; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 F.R. 14957.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11 a.m., Tuesday, April 26, 1994.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has changed the date of the meeting to discuss an enforcement quarterly review to 11 a.m., Thursday, May 5, 1994.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–9842 Filed 4–19–94; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 F.R. 14957.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:15 a.m., Tuesday, April 26, 1994.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has changed the date of the meeting to discuss a rule enforcement review to 11:15 a.m., Thursday, May 5, 1994.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–9841 Filed 4–19–94; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 27, 1994.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–9840 Filed 4–19–94; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 6, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–9837 Filed 4–19–94; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 13, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–9838 Filed 4–19–94; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 20, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–9839 Filed 4–19–94; 3:17 pm]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–9184.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 21, 1994, 10 a.m., Meeting Open to the Public.

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Final Audit Report on Wilder for President Committee.

Final Audit Report on Lenora B. Fulani for President.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–9845 Filed 4–19–94; 3:46 pm]

BILLING CODE 6715–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting

at 9:00 a.m. on Tuesday, May 3, 1994, in Costa Mesa, California. The meeting is open to the public and will be held at the Westin Hotel, 686 Anton Boulevard, in the Balboa Ballroom. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, May 2, 1994, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

May 3–9:00 a.m. (Open)

1. Minutes of the Previous Meeting, April 4–5, 1994
2. Remarks of the Postmaster General and CEO. (Marvin Runyon)
3. Review of the 1993 GAO Report on Hispanic Employment at the U.S. Postal Service. (Veronica O. Collazo, Vice President, Diversity Development)
4. Quarterly Report on Service Performance. (Ann McK. Robinson, Vice President, Consumer Advocate)
5. Quarterly Report on Financial Performance. (Michael J. Riley, Chief Financial Officer and Senior Vice President, Finance)
6. Status Report on Chicago, Illinois, Mail Service
7. Overview of Environmental Programs. (William J. Dowling, Vice President, Engineering)
8. Report on the Santa Ana District. (Arthur O. Martinez, Customer Service District Manager, and Robert Gillis, Plant Manager, Santa Ana P&DC)
9. Capital Investments
   a. Funding Request for Seven More Small Parcel and Bundle Sorters. (William J. Dowling, Vice President, Engineering)
   b. Additional Funding Request for Sacramento, California, P&DC. (Peter A. Jacobson, Senior Vice President, Processing and Distribution)
   c. Briefing on Anaheim, California, Processing & Distribution Center Project. (Diane Regan, Pacific Area Manager, Processing and Distribution)
10. Tentative Agenda for the June 6–7, 1994, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 94–9785 Filed 4–19–94; 12:45 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 59, No. 77
Thursday, April 21, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1744 and 1753

Post-Loan Policies and Procedures Common to Guaranteed and Insured Telephone Loans; Telecommunications System Construction Policies and Procedures

Correction

In proposed rule document 94-4858 beginning on page 10327 in the issue of Friday, March 4, 1994 make the following corrections:

1. On page 10331, under Appendix A table, in the second footnote, insert quotation marks after the words "As-Built".

2. On the same page, in Appendix B, in the seventh column, the third number from the bottom should read "2". And in the eighth column, the third number from the bottom should read "1".

3. On page 10332, in Appendix C., under the entry "Tabulation of Staking Sheets" add the following entry:

APPENDIX C.—DOCUMENTS REQUIRED TO CLOSEOUT TELEPHONE CONSTRUCTION CONTRACT REA FORM 515

REA Form No.	Description	No. of Copies	Form available from REA	Prepared by		Distribution		
				Engineer	Contractor	Borrower	Contractor	REA
	Correction Summary (legible copy)	1	.....	x	.....	1	.....	.....

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7036

[CO-930-4210-06; COC-53648]

Withdrawal of National Forest System Land for Protection of the Lake Catamount Recreation Area; Colorado

Correction

In rule document 94-7887 beginning on page 15342 in the issue of Friday, April 1, 1994, make the following corrections:

1. On page 15342, in the 3rd column, in the 24th line from the bottom, "S." should read "N.".

2. On page 15343, in the first column, in the last line, "31" should read "32".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration Related Employment Discrimination Public Education Grant

Correction

In notice document 94-7620 beginning on page 15220 in the issue of Thursday, March 31, 1994, make the following corrections:

On page 15221, in the first column, the **APPLICATION DUE DATE** and on page 15222, in the third column the **Application Deadline** are corrected to read "May 31, 1994".

BILLING CODE 1505-01-D

federal register

Thursday
April 21, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

Plan for the Use of the Walker River Paiute Tribe Indian Judgment Funds; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use of the Walker River Paiute Tribe Indian Judgment Funds in Docket No. 87–A (Grazing and Fiscal Claims) Before the United States Court of Federal Claims

April 8, 1994.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

EFFECTIVE DATE: This plan was effective as of March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, MS 2611–MIB, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on December 16, 1992 in satisfaction of the award granted to the Walker River Paiute Tribe before the United States Court of Federal Claims in Docket 87–A (Grazing and Fiscal Claims). The plan for the use of the funds was submitted to Congress with a letter dated October 5, 1993 and was received (as recorded in the Congressional Record) by the Senate on October 18, 1993 and by the House of Representatives on October 13, 1993. The plan became effective March 9, 1994 as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use and Distribution of Judgment Funds Awarded to the Walker River Paiute Indian Tribe in Docket 87–A (Grazing and Fiscal Claims) before the United States Court of Federal Claims

The funds appropriated on December 16, 1992 in satisfaction of the award granted in Docket 87–A (Grazing and Fiscal Claims), granted to the Walker River Paiute Tribe before the United States Court of Federal Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

Per Capita Aspect

Seventy (70) percent of the funds shall be distributed in the form of per capita payments by the Secretary of the Interior (hereinafter the "Secretary") in sums as equal as possible to all tribal members born on or prior to and living on the effective date of this plan, except that individuals who have received per capita payments or dividend payments from any other federally recognized tribe or tribes, by virtue of tribal membership, shall not be eligible to participate in the per capita payment aspect of this plan.

The tribal governing body shall establish, with the approval of the Secretary, procedures and a deadline for the filing of applications for tribal enrollment. Such deadline shall not be established on a Saturday, Sunday or legal holiday.

Programming Aspect

Thirty (30) percent of the funds, and any amounts remaining from the per capita payments provided above, shall be invested by the Secretary, and the principal, interest, and investment income accrued shall be available on a budgetary basis to the tribal governing body, subject to the approval of the Secretary, to be used for tribal educational priorities, specifically for the construction and operation of a school on the Walker River Indian Reservation.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

The Secretary, in arranging for the per capita payments to be made, shall withhold sufficient shares for individuals, whose eligibility may be in question. Those shares shall be held at interest in separate Individual Indian Money (IIM) accounts, pending determination of an individual's enrollment appeal. The amount of any shares not used to pay successful appellants shall be available for use in the programming aspect of this plan.

None of the funds distributed per capita or made available under this plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–9586 Filed 4–20–94; 8:45 am]

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Thursday
April 21, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3740; FR–3644–N–01]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages, Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability for fiscal year 1994.

SUMMARY: This Notice of Fund Availability (NOFA) announces HUD's funding for the Community Development Block Grant Program for Indian tribes and Alaskan native villages for Fiscal Year 1994. In the body of this document is information concerning the following:

(a) The purpose of the NOFA, and information regarding eligibility, available amounts, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: Applications may be mailed to HUD, provided that they are postmarked no later than midnight on the deadline date: July 20, 1994. Applications that are physically delivered to HUD must be received by the appropriate HUD Field Office (FO) no later than the close of business July 20, 1994. Application materials will be available from each field ONAP.

FOR FURTHER INFORMATION CONTACT: Applicants should contact the HUD Field Office serving their geographic area:

Elton Jones, Chicago Office of Native American Programs, Housing and Community Development Division, 77 West Jackson Blvd., Chicago, Illinois 60604. Telephone (312) 353–1683.

Jules Valdez, Oklahoma City Office of Native American Programs, CPD Branch, Murrah Federal Building, 200 NW 5th St., Oklahoma City, OK 73102–3202. Telephone (405) 231–5968.

Frank Padilla, Denver Office of Native American Programs, Housing and Community Development Division, First Interstate Tower North, 833 17Th St., Denver, CO 80202–3607. Telephone (303) 672–5465.

Gerald Hammon, Office of Native American Programs, Region IX, CPD Division, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004–2361. Telephone (602) 379–4197.

Robert Barth, Office of Native American Programs, CPD Division, Program Management Team, (San Francisco) Phillip Burton Federal Bldg. and U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448. Telephone (415) 556–9200.

Jeanne McArthur, Seattle Office of Native American Programs, CPD Division, Federal Office Building, 909 First Avenue, Suite 200 , Seattle, WA 98104–1000. Telephone (206) 220–5271.

Barry Bruninga, Anchorage Office of Native American Programs, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4135. Telephone (907) 271–4673.

With general program questions, contact, Dom Nessi, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4140, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708–1015. The Telecommunications Device for the Deaf (TDD) number is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Requirements

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2506–0043.

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Purpose and Substantive Description

(a) Authority

Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR part 571.

(b) Funding

Amendments to Title I of the Housing and Community Development Act of

1974 have required that the allocation for Indian Tribes be on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. The interim regulation containing the selection criteria was issued April 7, 1992.

The Department has determined that only quality Indian Community Development Block Grant (ICDBG) projects are to be funded. Section 571.100(b)(2) prohibits HUD field offices (FO) from funding applications that do not meet a serious need or which do not impact on the needs identified in the application. Accordingly, even if funds were available to fund a project based on its rating, if that project did not meet these criteria, it would not be funded. The funds would be used to fund the next highest ranking project or could be carried forward to the next funding cycle, if none of the lower ranking projects met a serious need or impacted on the needs identified in the application. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR part 571.

Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

1. Allocations. The requirements for allocating funds to field offices responsible for program administration are found at 24 CFR 571.101. Following these requirements, the allocation for FY 1994 is as follows:

Chicago	$3,231,000
Oklahoma	8,299,000
Denver	6,929,000
Phoenix	19,680,000
Seattle	2,365,000
Anchorage	3,496,000
Total	$44,000,000

2. Grant Ceilings. The authority to establish grant ceilings is found at 24 CFR 571.100(b). These grant ceilings are established for FY 1993 funding at the following levels:

Region/field offices	Population	Ceiling
Region 5 (Chicago)	All	$300,000
Region 6 (OK City)	All	750,000
Region 8 (Denver)	All	800,000
Region 9 (Phoenix)	50,001+	5,000,000
	10,501–50,000	2,500,000
	9,001–10,500	2,000,000
	7,501–9,000	1,500,000
	6,001–7,500	1,000,000
	4,501–6,000	750,000
	3,001–4,500	650,000
	1,501–3,000	550,000
	1–1,500	450,000
Region 10 (Seattle)	All	270,000
Anchorage	All	500,000

3. Imminent Threats. The criteria for grants to alleviate or remove imminent threats to health or safety that require immediate solution are described at subpart E of part 571. The following field offices are setting aside funds for imminent threats:

Region 9 (Phoenix) $400,000. These funds will be available until the Phoenix Office receives its FY 1995 ICDBG allocation.

Seattle $250,000. These funds will be available until Seattle completes the rating and ranking process for funds distributed under this NOFA.

(c) Eligibility of Activities

Activities that are eligible for CDBG funds are identified at 24 CFR Part 570 Subpart C. Both the National Affordable Housing Act (NAHA) (P.L. 101–625) and the Housing and Community Development Act of 1992 (the 1992 Act) (P.L. 102–550) amended Title I of the Housing and Community Development Act of 1974 (HCD Act). Various amendments made by these two recent acts are applicable.

(d) Applicant Eligibility

To apply for funding in a given fiscal year, an applicant must be eligible as an Indian tribe or Alaskan native village, or as a tribal organization by the application submission date.

"Tribal organizations" are permitted to submit applications under 24 CFR 571.5(b) on behalf of eligible tribes or villages when one or more eligible tribe or village authorize the organization to do so under concurring resolutions. The Tribal organization must also be eligible under the Indian Self-Determination Act. If a tribe or tribal organization claims that it is a successor to an eligible entity, the FO must review the documentation to determine whether it is in fact the successor entity.

Due to the unique governmental structure of Alaskan Native Villages there is on occasion more than one group that could be recognized as the governing body of an eligible entity as set forth at 24 CFR 571.5.

On December 29, 1988, the Bureau of Indian Affairs (BIA) published a **Federal Register** Notice entitled "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs". This Notice included an alphabetical listing of all Alaskan entities eligible to receive funding and services from the Bureau of Indian Affairs. Each entity listed qualified under one of the nine criteria set forth in the Notice. The Notice stated that an entity which qualified under criteria 1, 2, 3, 4, or 9 is also an "Indian tribe" under the definition of that term used for the purposes of the Indian Self-Determination Act. The criteria are:

1. "Tribes" as defined or established under the Indian Reorganization Act (IRA) as supplemented by the Alaska Native Act.
2. Alaska Native Villages defined in or established pursuant to the Alaska Native Claims Settlement Act (ANCSA).
3. Village corporations defined in or established pursuant to ANCSA.
4. Regional corporations defined in or established pursuant to ANCSA.
9. Tribes which have petitioned to be acknowledged and have been determined to exist as tribes pursuant to 25 CFR Part 83. (A BIA regulation)

The hierarchy for funding priority continues to be the IRA Village Council, then the Traditional Village Council, followed by the Village Corporation and the Regional Corporation. Since there may only be one application submitted for an ICDBG grant for each area within the jurisdiction of an entity eligible under 24 CFR 571.5, if a Village Corporation or Regional Corporation submits an application for an ICDBG grant for activities in the jurisdiction of one or more eligible tribes or villages, it must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit an ICDBG application for that funding round.

If possible, questions regarding eligibility determinations and related documentation requirements should be referred to the Anchorage FO prior to the deadline for submitting an application. (See 24 CFR 571.5 for a complete description of eligible applicants.)

(e) Selection Criteria/Rating Factors

1. Rating and Ranking System

Prior to the rating process, field offices will screen applications to ensure that they meet the acceptance criteria in 24 CFR 571.301(a). Field offices will review each application that passes the screening to ensure that each proposed project meets all of the requirements in 24 CFR 571.302(a), as implemented by this NOFA.

The field office will determine the proper category and component (e.g., Housing Rehabilitation) under which to rate each project. Each component is worth 100 points, which is the maximum that a project can receive.

All projects that meet the acceptance criteria and threshold requirements will be reviewed and rated by a field office rating team of at least three voting members. The rating team will normally consist of representatives from the Indian CDBG staff. Voting members may be selected from other HUD divisions, such as the non-CPD portion of the Office of Indian Housing, and non-Indian CPD. The rating panel may solicit technical advice from experts such as attorneys, economists and cost analysts. Experts may be voting or non-voting members.

After each of the applications has been rated, the projects will be ranked in order of the point totals they received, regardless of the rating category or component under which the points were awarded. Projects will be selected for funding based on their ranking, in accordance with the requirements of §§ 571.100(b) and 571.302(c).

2. Thresholds

The ICDBG regulation (24 CFR part 571) contains two types of general thresholds: those that relate to applicants, and those that address overall community development appropriateness. Project-specific definitions and thresholds will be addressed within the pertinent project selection criteria categories.

Applicant thresholds focus on the administrative capacity of the applicant to undertake the proposed project(s), and on its past performance in the ICDBG and Housing programs. An applicant that has participated in the ICDBG program previously must have performed adequately. In cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance prior to submitting an ICDBG application to HUD.

In order for the project(s) contained in applications that have passed the initial screening tests outlined in section 571.301 to be rated and ranked, field offices must determine that the proposed project(s) meets the community development appropriateness thresholds and: (a) Has costs that are reasonable, (b) is appropriate for the intended use, and (c) will normally be completed within two years.

If an applicant fails to meet the applicant-specific thresholds, its application cannot be accepted for rating and ranking. Project(s) that do not meet the community development appropriateness or project-specific thresholds will not be considered for funding.

A. Applicant-Specific Thresholds—Capacity and Performance

(1) *Capacity.* The field office will assume, absent evidence to the contrary, that the applicant possesses, or can obtain the managerial, technical or administrative capability necessary to carry out the proposed project(s). The application should address who will administer the project(s) and how the applicant plans to handle the technical aspects of executing the project(s). If the field office determines, based on substantial evidence, that the applicant does not have or cannot obtain the capacity to undertake the proposed project(s), the project(s) will be rejected from further consideration.

(2) *Performance.* If an applicant has participated in the ICDBG Program previously, the field office shall determine whether the applicant has performed adequately in grant administration and management. Where an applicant was found to be performing inadequately, the field office shall determine whether the applicant is following a schedule to correct performance, to which the applicant and HUD have agreed. In cases of previously documented deficient performance, the field office must determine that the applicant has taken appropriate corrective action to improve its performance.

a. *Community development.* The applicant is presumed to be performing adequately unless the field office makes a performance determination to the contrary by monitoring.

b. *Housing assistance.* The applicant is presumed not to have taken actions to impede the provision of housing assistance for low- and moderate-income members of the tribe or village. Any action that is known to HUD to prevent or obstruct the provision or operation of assisted housing for low

and moderate income persons shall be evaluated in terms of whether it constitutes inadequate performance by the applicant.

In addition, tribes have certain responsibilities and obligations to Indian Housing Authorities (IHAs), outlined in Article VIII of HUD's Model Tribal Ordinance. In instances where a tribe has established or joined an IHA, and has obtained housing assistance from HUD, its compliance with the resolution set forth in Article VIII will be a performance consideration.

Applicants will not be held accountable for the poor performance of Indian Housing Authorities (IHAs). However, if inadequate performance is found to be a direct result of the applicant's action or inaction, the application will be rejected from further consideration. Applicants who are members of "umbrella" IHAs will be judged only on their individual performance and will not be held accountable for the poor performance of other tribes that are represented by the IHA.

In the case of tribes that have not established or are not members of housing authorities, HUD will consider in making its determination, whether the tribe received CDBG funds for the provision of new housing, and if so: (i) whether the proposed units were constructed; (ii) whether housing assistance was provided to the beneficiaries identified in the application, and if not, why not; (iii) whether the tribe followed the provisions of its housing plan and procedures; and (iv) whether there were sustained complaints from tribal members regarding provision and/or distribution of CDBG housing assistance.

c. *Audits.* This threshold requires the applicant to meet the following performance criteria:

(i) The applicant cannot have an outstanding ICDBG obligation to HUD that is in arrears, or it must have agreed to a repayment schedule. An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current competition and from subsequent competitions, until the obligations are current. If a grantee that was current at the time of application submission becomes delinquent during the review period, the application may be rejected.

(ii) The applicant cannot have an overdue or unsatisfactory response to an audit finding(s). If there is an overdue or unsatisfactory response to an audit finding(s), the applicant will be disqualified from current and subsequent competition until the applicant has taken final action necessary to close the audit finding(s). The field office director may provide exceptions to this disqualification in cases where the applicant has made a good faith effort to clear the audit finding(s). Only when a satisfactory arrangement for repayment of the debt has been made, and payments are current, will an exception be granted when funds are due HUD.

B. Community Development Appropriateness

The following criteria must be met by all applicants:

(1) *Costs are reasonable.* The project(s) must be described in sufficient detail so that HUD can determine: (a) that costs are reasonable; and (b) that the funds requested from the CDBG program and all other sources are adequate to complete the proposed activity(ies) described in the application.

(2) The project(s) is appropriate for the intended use.

(3) The project(s) is usable or achievable in a timely manner, generally within a two-year period. The applicant must indicate its timetable for project implementation and completion. A period of more than two years is acceptable in certain circumstances, which are beyond the applicant's control. For example, a construction season may be limited by severe weather, or extra time may be required to coordinate different funding dates for other entities assisting the same project.

3. Tiebreakers

When rating results in a tie among projects, field offices shall approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the following factors should be used in the order listed to resolve the tie:

A. Chicago Office

(1) The application that benefits the highest percentage of low- and moderate-income persons.

(2) The application that benefits the most low- and moderate-income persons.

B. Oklahoma City Office

(1) The application that benefits the highest percentage of low- and moderate-income persons.

(2) The applicant with the fewest active grants.

(3) The application that benefits the most low- and moderate-income persons.

C. Denver Office

(1) The application that benefits the highest percentage of low- and moderate-income persons.

(2) The application that benefits the most low- and moderate-income persons.

D. Phoenix Office

(1) The applicant with the fewest active grants.

(2) The applicant that has not received a block grant over the longest period of time.

(3) The application that benefits the highest percentage of low- and moderate-income persons.

E. Seattle Office

(1) The applicant that has not received a block grant over the longest period of time.

(2) The applicant that has received the fewest CDBG dollars since the inception of the program.

(3) The application that benefits the highest percentage of low- and moderate-income persons.

F. Anchorage Office

(1) The applicant that has not received a block grant over the longest period of time.

(2) The application that benefits the highest percentage of low- and moderate-income persons.

(3) The application that benefits the most low- and moderate-income persons.

4. General Definitions

Adopt. To approve by formal tribal resolution, as defined at 24 CFR Part 571.4.

Assure. To comply with a specific NOFA requirement. The applicant should state its compliance or its intent to comply in its application.

Document. To supply supporting written information and/or data in the application, which satisfies the NOFA requirement.

Leverage. Resources the grantee can use in conjunction with CDBG funds to achieve the objectives of the project. Resources include, but are not limited to: tribal trust funds, loans from individuals or organizations, state or federal loans or guarantees, other grants, as well as noncash contributions and donated services. Funds from any source must be documented by a written commitment and may be contingent on approval of the CDBG award. Resources will be counted only if they are currently available or will be available within 3 months of grant notification. If delays in the Federal funding process preclude an agency from making a firm

funding commitment, resources will be counted if the agency issues a written statement indicating that it is extremely likely that the applicant will be funded within 6 months of the date of grant notification. Donated services will be accepted, provided: (1) the costs are demonstrated and determined necessary and directly attributable to the actual development of the project; and (2) comparable costs and time estimates are submitted which support the donation.

Project Cost. Total cost to implement the project. Project cost includes both CDBG and non CDBG funds.

Tribe. Indian tribe, band, group or nation, including Alaskan Indians, Aleuts, Eskimos and Alaskan native villages.

5. Project Definitions, Thresholds and Selection Criteria

A. Housing

(1) Definition

Section 8 standards. Standards contained in the Section 8 Housing Assistance Payments Program—Existing Housing (24 CFR 882.109).

(2) General Thresholds

Households that have been evicted from HUD housing within the past five years may not be assisted, except in emergency situations, which will be reviewed by field offices on a case-by-case basis.

(3) Rehabilitation

a. *Thresholds.* (i) All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies, prior to submitting an application.

(ii) Any units to be rehabilitated must be the permanent non-seasonal residence of the occupant(s). The resident(s) must live in the unit at least nine months per year.

(iii) Housing units slated for eventual replacement may only receive repairs essential for health and safety.

(iv) The applicant shall provide an assurance that it will use project funds to rehabilitate HUD assisted units only where the tenant/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions on a case-by-case basis to the requirement that beneficiaries be current to permit housing rehabilitation in emergency situations.

(v) Houses that have received comprehensive rehabilitation assistance from any CDBG or federal grant within the past 8 years cannot receive CDBG funds to make the same repairs if the repairs are needed as a result of abuse or neglect.

b. *Grant limits.* Rehabilitation grant limits for each field office jurisdiction are as follows:

(i) Region 5 (Chicago)	$15,000
(ii) Region 6 (OK City)	15,000
(iii) Region 8 (Denver)	33,500
(iv) Region 9 (Phoenix)	25,000
(v) Region 10 (Seattle)	20,000
(vi) (Anchorage)	Lesser of $35/square feet or $25,000

c. *Selection Criteria.* Applicants for housing rehabilitation projects will be rated based on the following:

(i) Project Need and Design (45 points)

a The percentage of CDBG funds committed to bring the housing up to standard condition as defined by the applicant. Standard condition is defined as adoption of standards at least as stringent as Section 8. Exceptions, which must be approved by the field office, may be made when local conditions make the use of Section 8 standards infeasible. For example, units may be too remote to make the provision of electricity and running water economically feasible, or Section 8 standards may not be met for historic preservation reasons. In all cases, to be considered in standard condition, a home must be in safe, sanitary, and physically sound condition with all systems performing their intended functions.

Administrative and technical assistance expenditures are excluded in computing the percentage of CDBG funds committed to bring housing up to standard condition. The percentage of CDBG funds not used to bring housing up to standard condition should be used for emergency repairs, demolition of substandard units, planning related to the particular project or another purpose closely related to the housing rehabilitation project.

Percentage of CDBG funds committed to bring housing up to standard condition	Points
1 91–100%	25
2 81–90%	10
3 80% and less	0

b The applicant's selection criteria give priority to the neediest households. "Neediest" is defined as households whose current residences are in the greatest disrepair in the project area, or very low-income households.

1 Yes (10 points).

2 No (0 points).

c Documentation of project need with a housing survey of all of the units to be rehabilitated with CDBG funds. This survey should include standard housing data on each unit surveyed (e.g., age, size, type, rooms, type of heating). The survey should show the number of standard units, the number of substandard units suitable for rehabilitation with the deficiencies listed for each unit, and the number of substandard units unsuitable for rehabilitation. A definition of "suitable for rehabilitation" should be included. At a minimum, this definition should not include units that need only minor repairs, or units that need such major repairs that rehabilitation is structurally or financially infeasible.

Submission of acceptable survey of deficiencies.

1 Yes (10 points).

2 No (0 points).

(ii) Planning and Implementation (45 points).

a Rehabilitation Policies including:

1 Adopted rehabilitation standards. Adopted rehabilitation standards should be at least equal to Section 8 standards except that the field office can approve lesser standards as provided in Paragraph 1(i). Tribes may submit their request for lesser standards prior to the application due date. If the request is submitted with the application, applicants should not assume automatic approval from the field office.

- Yes (5 points).
- No (0 points).

2 Rehabilitation selection criteria. Rehabilitation selection criteria include property selection standards, cost limits, type of financing (e.g., loan or grant), homeowner costs and responsibilities, procedures for selecting households to be assisted, and income verification procedures.

- Maximum (11 points).

The application contains all the selection criteria listed above.

- Moderate (5 points).

The application does not contain all the selection criteria listed above, but a sufficient number to enable the project to proceed effectively; or the application contains all the selection criteria listed above, but in insufficient detail.

- Unsatisfactory (0 points).

The submission does not meet the Moderate criteria.

3 Project planning documents and applicable policies and procedures. Project planning documents include surveys, time schedules, and work priorities. Policies and procedures include: inspections, contractor payment (an inspection to ensure the work is successfully completed before the contractor is paid), household involvement in the rehabilitation (e.g., helping select the contractor and signing off on inspections), contractor selection contractor forms, complaints, contract

or dispute resolution, and repayment provisions for early sale, (i.e., before 5 years).

• Maximum (5 points).

The application contains all the policies and procedures listed above, and they will enable the project to be effectively implemented.

• Moderate (3 points).

The application contains some but not all of the policies and procedures listed above, and they are sufficient for the project to proceed effectively.

• Unsatisfactory (0 points).

The submission does not meet the Moderate criteria.

b Post rehabilitation maintenance policies, including counseling and training homeowners on maintenance.

1 Maximum (7 points).

The policy contains a well-planned counseling and training program. Training will be provided for assisted households, and provision is made for households unable to do their own maintenance (e.g., elderly and handicapped). The policy includes follow-up inspections after rehabilitation is completed to ensure the unit is being maintained.

2 Moderate (4 points).

The policy contains a well-planned home ownership maintenance training and counseling program.

3 Unsatisfactory (0 points).

The submission does not meet the Moderate criteria.

c Quality of cost estimates. Cost estimates have been prepared by a qualified individual.

1 Maximum (12 points).

Costs must be documented on a per unit basis and must be justified. Applicants must include work write-ups based on tribal specifications or estimates by a qualified individual. Work write-ups state what needs to be done to correct the deficiency (e.g., provide an oil heater to correct a deficiency of an inadequate heating system). The tribal specifications state the quality and the dimensions of the improvements (e.g., the heating unit must be capable of putting out x BTU's in order to heat the unit to a temperature of 70 degrees when the outside temperature is 0 degrees).

2 High (8 points).

Cost estimates developed by a qualified individual have been prepared on each dwelling unit to be rehabilitated to determine the total rehabilitation cost. Costs to rehabilitate each house are documented by a deficiency list.

3 Moderate (3 points).

A qualified individual has prepared cost estimates only for the project based on surveys, but not for individual units.

4 Unsatisfactory (0 points).

The submission does not meet the criteria in paragraph *3*.

d Cost effectiveness of the rehabilitation program. This measures the efficiency of the expenditures that are made for housing rehabilitation, considering the needs of the unit. Projects should propose rehabilitation that is needed to bring units up to standard in the most efficient manner and at a reasonable cost. Cost savings may be realized through efforts such as energy conservation, or a partnership or affiliation with technical experts to develop an innovative approach.

1 Rehabilitation project is cost effective (5 points).

2 Rehabilitation project is not cost effective (0 points).

(iii) Leveraging (10 points).

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of project cost	Points
25 and over	10
20–24	8
15–19	6
10–14	4
5–9	2
0–4	0

(4) Land to Support New Housing

a. *Thresholds.* (i) The net usable acres acquired must not exceed the amount of property needed to construct the proposed houses utilizing prudent site design.

(ii) Housing assistance needs must be clearly demonstrated, for example, with a survey or an IHA-approved waiting list.

b. *Selection Criteria.* Applications for land purchase will be selected based on the following:

(i) Project Need (40 points).

a Maximum (40 points).

The applicant has no suitable land to construct new housing and needed amenities (e.g., water and sewer) for new housing.

b High (30 points).

The applicant has land suitable for housing construction and infrastructure, but the land is officially dedicated to another purpose.

c Moderate (25 points).

The applicant will be acquiring land to construct new housing and to provide needed amenities (e.g., water and sewer) to both new housing and existing housing.

d Low (15 points).

The applicant will be acquiring land to construct amenities (e.g., water and sewer) for existing housing.

e Unsatisfactory (0 points).

The submission does not meet the criteria in paragraph *d*.

(ii) Planning and Implementation (60 points).

a Suitability of land to be acquired. A preliminary investigation has been conducted by a qualified entity independent of the applicant (e.g., BIA or IHS). Based on the preliminary investigation, the land appears to meet all applicable requirements, soil conditions appear to be suitable for individual and/or community septic systems, if appropriate, and the land has adequate drainage and access to water, electricity and community sewer collection systems. Land has adequate access, and appears to comply with environmental requirements. Land is available at a reasonable price. Future land development costs are expected to be consistent with other area subdivision costs (Subdivision costs include the cost of constructing each unit, plus the land, water and sewer service, electrical service, and roads required to serve the subdivision). The site complies with all applicable requirements.

1 Yes (18 points).

2 No (0 points).

b Housing resources are committed at the time of project application.

1 Conditional commitment or approvable application submitted. (5 points).

2 No Conditional commitment or approvable application submitted. (0 points).

c Availability/accessibility of supportive services and employment opportunities. Upon completion of construction, fire and police protection, road accessibility and utilities will be available to the site, and medical and social services, schools, employment opportunities, and shopping will be accessible from the site, i.e., according to the community's established norm.

1 Yes (8 points).

2 No (0 points).

d Commitment that families will move into the new housing.

1 Documented commitment from families that they will move into new housing. (5 points).

2 No documented commitment. (0 points).

e Land can be taken into trust or provisions have been made for taxes and fees. There must be a written assurance from the BIA that the land will be taken into trust within one year, or the applicant must be able to show the financial capability and commitment to pay the property taxes and fees on the land for the foreseeable future. This commitment should take the form of a resolution by the governing body

indicating that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

1 Documentation that land can be taken into trust or provisions made for taxes and fees. (4 points).

2 Inadequate or no documentation. (0 points).

f A plan for any infrastructure needed to support housing to be developed. This includes a conditional commitment for funds to develop necessary water, sewer, electricity and roads to support the housing to be developed.

1 Financial commitment provided or infrastructure is in place. (10 points).

2 A plan, but no financial commitment, is in place. (5 points).

3 No financial commitment or plan. (0 points).

g The extent to which the proposed site meets the applicant's housing needs. The application shows that the tribe has examined and assessed the appropriateness of alternative sites. The applicant submits comparable sales that show the cost is reasonable.

1 Yes (10 points).

2 No (0 points).

(5) New Housing Construction/Direct Home Ownership Assistance

a. New Construction

(i) Thresholds

a New housing construction can only be implemented through a nonprofit organization that is eligible under Section 571.202 or a nonprofit organization serving the development needs of the communities of nonentitlement areas or as otherwise eligible under Section 570.207(b)(3).

b All applicants for new housing construction grants must document the following in their application:

1 No other housing is available in the immediate reservation area that is suitable for the families to be assisted.

2 No other funding sources can meet the needs of the household(s) to be served.

3 Rehabilitation of the unit occupied by the family to be housed is not economically feasible, or the family to be housed is currently in an overcrowded unit (sharing unit with other household(s), or the family to be housed has no current residence.

c All applicants for housing construction grants shall adopt construction standards and construction policies, prior to submitting an application. Applicants must identify the building code they will use to construct the unit(s). The building code may be a locally adopted tribal building code or a nationally recognized model code. If the code is a locally adopted code, it must regulate all of the areas and subareas identified in 24 CFR 200.925(b), and it must be reviewed and approved by the HUD field office. If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925(c).

d Any units to be constructed must be the permanent non-seasonal residences of the recipient. The residents must live in the unit at least nine months per year.

e The applicant shall assure that it will use project funds to construct units only where the tenant's/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit new construction, in emergency situations.

(ii) Selection Criteria

a New construction under Section 248 of the National Housing Act will be rated under the Direct Home Ownership Assistance Selection criteria. The New Construction thresholds will be used for Section 248 New Construction.

b Project Need and Design (45 points).

1 The applicant either is not a member of an IHA, or the umbrella IHA to which it belongs has not provided assistance to the applicant in a substantial period of time, or the IHA serving the applicant has not received HUD Public and Indian Housing new construction or modernization assistance in a substantial period of time, due to a lack of funds. The period of time during which the IHA serving the applicant does not receive funding for inadequate or poor performance by the applicant does not count towards the period of time that no assistance has been provided by HUD.

- No assistance from IHA for 10 years or longer. (15 points).
- No assistance from IHA for 6–9.9 years. (10 points).
- No assistance from IHA for 0–5.9 years. (0 points).

2 Adopted housing construction policies and plan. The plan should include a description of the proposed subrecipient and its relationship to the tribe. In addition, the policies and plan should include:

- A selection system that gives priority to the neediest households. Neediest shall be defined as households whose current residences are in the greatest disrepair, or very low-income households, or households without permanent housing.
- A system effectively addressing long-term maintenance of the constructed units.
- Estimated costs and identification of the responsible entity for paying utilities, fire hazard insurance and other normal maintenance costs.
- Policies governing ownership of the units, including the status of the land.
- Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.
- Policies governing disposition or conversion to non-dwelling uses of substandard units that will be vacated.

—Acceptable policies and plan. (20 points).

—Unacceptable policies and plan. (0 points).

3 Beneficiary identification (all beneficiaries are low- and moderate-income.)

- Beneficiaries to be housed are identified. (10 points).
- Beneficiaries are not identified. (0 points).

c Planning and Implementation (45 points).

1 Occupancy Standards. The proposed housing will be designed and built according to adopted reasonable standards that govern the size of the housing in relation to the size of the occupying family (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room).

- Applicant has adopted reasonable occupancy standards. (10 points).
- Applicant has no occupancy standards or standards are inappropriate. (0 points).

2 Site Acceptability. This includes consideration of land control, access, utilities, infrastructure, physical characteristics, and whether the site is held in trust.

The applicant has control of the land. The applicant has written assurance from the BIA that the land is (or will be) taken into trust within one year, or the applicant must be able to show the financial capability and commitment to pay the property taxes and fees on the land for the foreseeable future. This commitment should take the form of a resolution by the governing body within one year of the application deadline indicating that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

A preliminary investigation has been conducted by a qualified entity independent of the applicant (e.g., BIA or IHS). Based on the preliminary

investigation, the land appears to meet all applicable requirements, soil conditions appear to be suitable for individual and/or community septic systems, if appropriate, land has adequate drainage and accessibility to water, electricity and community sewer collection systems. Land has adequate access, and appears to comply with environmental requirements.

• Yes (15 points).

• No (0 points).

3 Energy Conservation Design. The project is designed so that energy consumption will meet or exceed state conservation standards for similar units in the same general area. Special design features and methodology should be described in detail.

• Yes (5 points).

• No (0 points).

4 Housing Survey. The survey should include all of the units in the service area for the new housing. The survey should include standard housing data on each unit surveyed (e.g., age, size, type, rooms, type of heating), as well as the components listed below.

A Total number of existing housing units in the community.

B Number of occupied units.

C Number of vacant units (line *A* minus line *B*).

D The number of standard units.

E The number of substandard units suitable for rehabilitation with the deficiencies listed for each unit. A definition of "suitable for rehabilitation" should be included.

F The number of substandard units unsuitable for rehabilitation.

G Number of vacant units that are in standard condition available and affordable to low-and moderate-income families.

H Number of Indian/native families living with other families resulting in overcrowded conditions.

I Number of Indian/native families living in units which are below standard and that are not cost effective to rehabilitate.

J Number of homeless Indian/native families.

K Number of families living in below standard conditions (Lines *H*, plus *I*, plus *J* equal line *K*).

• Acceptable survey. (10 points).

• Unacceptable survey. (0 points).

5 Cost effectiveness of new housing construction. This measures the efficiency of the expenditures. Projects should provide new units in the most efficient manner and at a reasonable cost. Cost savings may be realized through efforts such as the use of cost effective construction techniques, a partnership or affiliation with technical experts to develop an innovative approach, or a repayment provision.

• New Housing Construction is Cost Effective (5 points).

• New Housing Construction is not Cost Effective (0 points).

d Leveraging. (10 points).

Applicants must provide documentation of the amount and sources of additional funds. Sources may include private contributions including equity and loans, applicant and other non-CDBG governmental funding.

Non-CDBG % of project cost	Points
25 and over	10
20–24	8
15–19	6
10–14	4
5–9	2
0–4	0

b. Direct Home Ownership Assistance

(i) Thresholds

a No other funding sources can meet the needs of the household(s) to be served.

b The unit occupied by the family to be housed does not meet Section 8 standards, and rehabilitating the unit is not economically feasible, or the family to be housed currently is in an overcrowded unit (sharing unit with other household(s), or the family to be housed has no current residence.

c Any units to be occupied must be the permanent non-seasonal residences of the recipient. The residents must live in the unit at least nine months per year.

d The applicant shall assure that it will use project funds to provide direct homeownership assistance only where the tenant's payments are current or the tenant is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit direct homeownership assistance in emergency situations.

(ii) Selection Criteria

a Project Need and Design (45 points).

1 Adopted housing policies and plan. The plan should include a description of the proposed subrecipient (if applicable) and its relationship to the tribe. In addition, the policies and plan should include:

• A selection system that gives priority to the neediest qualified households. Neediest may be defined as households whose current residences are in the greatest disrepair, very low-income households, or households without permanent housing.

• Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.

• Policies governing disposition or conversion to non-dwelling uses of substandard units that will be vacated.

• A system effectively addressing long-term maintenance of the units.

• Estimated costs of utilities, fire hazard insurance and other normal maintenance costs.

• Policies governing ownership of the units, including the status of the land.

• The units will meet Section 8 standards or another standard approved by the field office.

(a) The policies and plan are acceptable and contain all of the items listed above. (30 points).

(b) The policies and plan contain only the first three items listed above, and they are acceptable. (20 points).

(c) The policies and plan contain only the last four items listed above, and they are acceptable. (10 points).

(d) The policies and plan do not meet the criteria of paragraphs a, b, or c. (0 points).

2 Beneficiary identification. (All beneficiaries are low and moderate income.)

• Beneficiaries are identified. (15 points).

• Beneficiaries are not identified. (0 points).

b Planning and Implementation (45 points).

1 Occupancy Standards. The housing units will meet adopted reasonable standards that govern the size of the housing in relation to the size of the occupying family (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room).

• Applicant has appropriate occupancy standards. (13 points).

• Applicant has no occupancy standards or standards are inappropriate. (0 points).

2 Site Acceptability. This includes consideration of land control, access, utilities, infrastructure, physical characteristics, whether the site is held in trust, and available services, such as fire and police protection.

The applicant or prospective homeowner has control of the land. Applicant has a written assurance from the BIA that the land is (or will be) taken into trust within one year, or the applicant must be able to show the financial capability and commitment to pay the property taxes and fees on the land for the foreseeable future.

A preliminary investigation has been conducted by a qualified entity

independent of the applicant (e.g., BIA or IHS). Based on the preliminary investigation, the land appears to meet all applicable requirements, soil conditions appear to be suitable for individual and/or community septic systems, if appropriate, land has adequate drainage and accessibility to water, electricity and community sewer collection systems. Land has adequate access, and appears to comply with environmental requirements.

- Yes (20 points).
- No (0 points).

3 Energy Conservation Design. The project is designed so that energy consumption will be no greater than that of similar units in the same general area. Special design features and methodology should be described in detail.

- Yes (6 points).
- No (0 points).

4 Cost effectiveness of program. This measures the efficiency of the expenditures that are made for direct home ownership. Cost savings may be realized through efforts such as the use of cost effective construction techniques, a partnership or affiliation with technical experts to develop an innovative approach, provision of the least amount of assistance necessary for each homeowner to acquire the unit, or a provision for the homeowner to repay the tribe.

- Yes (6 points).
- No (0 points).

c Leveraging. (10 points).

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of project cost	Points
70 and over	10
60–69	8
50–59	6
40–49	4
30–39	2
0–29	0

B. *Community Facilities*

(1) General Thresholds

a. The applicant shall describe the problem, the proposed project and the anticipated impact on the tribe/village if the problem is not solved immediately.

(2) Infrastructure

a. Selection Criteria. Applications for Infrastructure will be evaluated based on the following:

(i) Project Need and Design (60 points).

a Meets an essential community development need by addressing a basic need that is critical to the orderly development of the community and to the provision of basic human services. (Example: water/sewer, waste disposal)

1 Permanent solution. The project offers a long-term solution. (17 points).

2 Health and safety intermediate solution. The project responds to a health or safety problem by offering a solution which is not permanent (e.g., providing potable water from elsewhere). (15 points).

3 Intermediate solution. The project responds to a problem which is not related to health or safety by offering a solution which is not permanent (e.g., providing a gravel road to a reservation where no road exists). (12 points).

4 Inadequate solution. (0 points).

b Benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

1 Maximum (22 points).

More than 90 percent of the beneficiaries are low and moderate income (80 percent of area income).

2 Moderate (13 points).

75–89.9 percent of the beneficiaries are low and moderate income.

3 Unsatisfactory (0 points).

Less than 75 percent of the beneficiaries are low and moderate income.

c Provides infrastructure that does not currently exist for the area to be served OR replaces an existing facility that no longer functions adequately to meet the current needs OR eliminates or substantially reduces a health or safety problem. If the project addresses a health and safety problem, the applicant must provide documentation consisting of a signed study or letter from a reliable independent authority (e.g., state health officials, state fire marshals, BIA, IHS, EPA) verifying that: (1) a threat to health and safety exists which has caused or has the potential to cause serious illness, injury, disease or death; and (2) the threat can be substantially eliminated if the CDBG project is funded.

1 Maximum (21 points).

The infrastructure does not exist or no longer functions, or does not meet health and safety standards. (Examples: there is no sewage treatment plant; paved roads do not exist or must be reconstructed due to severe deterioration.)

2 Moderate (15 points).

The infrastructure no longer functions adequately or does not meet current needs. (Example: capacity of existing sewage treatment plant is insufficient to meet the demands of area residents.)

3 Unsatisfactory (0 points).

The infrastructure does not meet the criteria of *1* or *2*.

(ii) Planning and Implementation (30 points).

a A viable plan for maintenance and operation. The tribe must adopt a maintenance plan addressing maintenance, repair and replacement of items not covered by insurance, and operating resources, if applicable. The applicant must submit this plan. The plan must identify a funding source to assure that the facility will be properly maintained and operated. The resolution must identify the total annual dollar amount the tribe will commit, as well as the source and availability of funds, including evidence that funds will be available within sixty days of project completion. If an entity other than the Tribal Council commits to pay for maintenance and operation that entity must submit a letter of commitment which identifies the responsibilities the entity will assume and the amount of funds that will be provided annually to the project. Points will only be awarded if the field office is able to determine that the entity is financially able to assume the costs of maintenance and operation.

1 Yes (15 points).

2 No (0 points).

b An appropriate and effective design, scale and cost. The applicant shows that it has proposed the most appropriate and cost effective approach to address its identified need(s). The applicant shows that it has considered initial construction and lifetime operation costs, as well as the use of existing facilities and resources, and alternatives, including method of implementation and cost. If only one approach is feasible, the applicant should explain why.

1 Yes (15 points).

2 No (0 points).

(iii) Leveraging (10 points).

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of project cost	Points
a 25+	10
b 20–24	8
c 15–19	6
d 10–14	4
e 5–9	2
f 0–4	0

(3) Buildings

a. Thresholds

(i) Tribes proposing a facility which would provide health care services must assure the facility meets IHS requirements.

b. Selection Criteria. Applications for Community Facilities will be evaluated based on the following:

(i) Project Need and Design (60 points).

a Benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

1 Maximum (28 points).

More than 90 percent of the beneficiaries are low and moderate income (80 percent of area median).

2 Moderate (18 points).

75–89.9 percent of the beneficiaries are low and moderate income.

3 Unsatisfactory (0 points).

Less than 75 percent of the beneficiaries are low and moderate income.

b Provides a building that serves a function that does not currently exist either within or outside (nearby) the community or reservation OR replaces an existing facility that no longer functions adequately to meet current needs. (Examples: health clinic; subsistence food processing facility, Alaska.)

1 Maximum (15 points).

The building does not exist or does not meet health and safety standards.

2 Moderate (12 points).

The building no longer functions adequately or does not meet current needs.

3 Unsatisfactory (0 points).

The building does not meet the criteria of *1* or *2*.

c Provides multiple uses or multiple benefits, or has services available 24 hours a day. The application must show that the proposed facility will house more than one broad category of activity. "Broad category" means a single activity or group of activities which serves a particular group of beneficiaries (e.g., senior citizens) or meets a particular need (e.g., literacy). No one category of activity will occupy more than 75 percent of the available space for more than 75 percent of the time. The use of space must be actually committed and documented in writing. Multipurpose buildings do not automatically meet these criteria, nor do buildings that provide a variety of activities for one client group.

1 Yes (3 points).

2 No (0 points).

d Meets an essential community development need by addressing a basic need that is critical to the orderly development of the community and to the provision of basic human services; OR eliminates or substantially reduces a health or safety problem. If the project addresses a health or safety problem, the applicant must provide documentation consisting of a signed study or letter from a reliable independent authority (e.g., state health officials, state fire marshals, BIA, IHS, EPA) verifying that: (1) A threat to health and safety exists which has caused or has the potential to cause serious illness, injury, disease or death; and (2) the threat can be substantially eliminated if the CDBG project is funded.

1 Yes (14 points).

2 No (0 points).

(ii) Planning and Implementation (30 points).

a A viable plan for maintenance and operation. The tribe must adopt a maintenance plan addressing maintenance, repair and replacement of items not covered by insurance, and operating resources, if applicable. The applicant must submit this plan. The plan must show that adequate funds are available for future replacements and identify a funding source to assure that the facility will be properly maintained and operated. The adopted resolution must identify the total annual dollar amount the tribe will commit, as well as the source and availability of funds, including evidence that funds will be available within sixty days of project completion. If an entity other than the Tribal Council commits to pay for maintenance and operation that entity must submit a letter of commitment which identifies the responsibilities the entity will assume and the amount of funds that will be provided annually to the project. Points will only be awarded if the field office is able to determine that the entity is financially able to assume the costs of maintenance and operation.

1 Yes (15 points).

2 No (0 points).

b An appropriate and effective design, scale and cost. The applicant documents that it has proposed an appropriate and cost effective approach to address its identified need(s). The applicant documents that it has considered initial construction and lifetime operation costs, as well as the use of existing facilities and resources, and alternatives including, method of implementation and cost. If only one approach is feasible, the applicant should explain why.

1 Yes (15 points).

2 No (0 points).

(iii) Leveraging (10 points).

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of project cost	Points
a 25+	10
b 20–24	8
c 15–19	6
d 10–14	4
e 5–9	2
f 0–4	0

C. Public Services

(1) Thresholds

a. Public services activities may comprise no more than 15 percent of the total grant award. Such projects must therefore be submitted with one or more other projects, which must comprise at least 85 percent of the total grant award. A public service project will be funded only if both the public service project itself and the other project(s) with which it is submitted rank high enough to be funded.

(2) Selection Criteria. Applications for Public Services will be evaluated based on the following:

a. Project Need and Design (45 points).

(i) Meets an essential community development need by addressing a basic need that is critical to the orderly development of the community and to the provision of basic human services.

a Yes (15 points).

b No (0 points).

(ii) Benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

a Maximum (27 points).

More than 90 percent of the beneficiaries are low and moderate income (80 percent of area median).

b Moderate (16 points).

75–89.9 percent of the beneficiaries are low and moderate income.

c Unsatisfactory (0 points).

Less than 75 percent of the beneficiaries are low and moderate income.

(iii) Provides a service(s) that will eliminate or substantially reduce a health or safety problem. The applicant must provide documentation consisting of a signed study or letter from a reliable independent authority (e.g., state health officials, state fire marshals, BIA, IHS, EPA) verifying that: (1) a threat to health and safety exists which has caused or has the potential to cause serious illness, injury, disease or death; and (2) the threat can be substantially eliminated if the CDBG project is funded.

a Yes (3 points).

b No (0 points).

b. Planning and Implementation (45 points).

(i) A viable plan for continuing provision of the service(s). The tribe

must adopt a plan to address continuing provision of the service(s). The applicant must submit this plan. The plan must identify a funding source to assure that the public service(s) will be properly carried out. The resolution must identify the total annual dollar amount the tribe will commit, as well as the source and availability of funds, including evidence that funds will be available within sixty days of project completion.

a Yes (15 points).

b No (0 points).

(ii) An appropriate and effective design, scale and cost. The applicant shows that it has proposed an appropriate and cost effective approach to address its identified need(s). The applicant shows that it has considered initial and long-term costs, as well as the use of existing services and resources, or has submitted an analysis from a qualified authority addressing alternatives, method of implementation and cost. If only one approach is feasible, the applicant should explain why.

a Yes (15 points).

b No (0 points).

(iii) An innovative method of using the public service to resolve the problem (e.g., original treatment methods, program delivery system, or use of technology).

a Yes (15 points).

b No (0 points).

c. Leveraging (10 points).

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of project cost	Points
(i) 25+	10
(ii) 20–24	8
(iii) 15–19	6
(iv) 10–14	4
(v) 5–9	2
(vi) 0–4	0

D. Economic Development

(1) Thresholds

a. Economic development assistance may be provided only when a financial analysis is done which shows public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project, and the project has a reasonable chance of success. The applicant shall demonstrate the need for grant assistance by providing documentation to support a determination that the assistance is appropriate to implement an economic development project.

b. All economic development projects must meet one of the national objectives. A general claim of cash flow or benefit to the tribe as a whole does *not* demonstrate low- and moderate-income benefit.

(2) Selection Criteria. Applications for Economic Development projects will be evaluated based on the following:

a. Project Viability. (55 points) The application will be rated on the adequacy and quality of the following subparts:

(i) Market analysis

a Maximum (10 points).

An independent third party feasibility/market analysis, generally not older than two years, which identifies the market and demonstrates that the proposed activities are highly likely to capture a fair share of the market.

b Moderate (6 points).

Feasibility/Market Analysis which identifies the market and demonstrates that the proposed activities are reasonably likely to capture a fair share of the market.

c Low (0 points).

The submission does not meet the criteria in paragraph *b*.

(ii) Management capacity

a Maximum (10 points).

A management team with qualifying *specialized* training or technical/managerial experience in the operation of a similar business has been identified. If the grant is approved, the business will hire the identified team or persons with similar training and experience. Applicants must submit job descriptions of key management positions as well as resumes showing qualifying specialized technical/managerial training or experience of the identified management team.

b Moderate (6 points).

A management team with qualifying general business training or experience will be hired if the grant is approved. Applicants must submit job descriptions of key management positions.

c Unsatisfactory (0 points).

The submission does not meet the criteria in paragraph *b*.

(iii) Organization

a Maximum (8 points).

1 The tribe or entity that will operate the business has an on-going successful business enterprise. The applicant must describe this enterprise and provide documentation of its healthy financial condition (e.g., audited financial statements for the past three years); and

2 The tribe or entity that operates the business has an acceptable business management system for project development and operation.

b Moderate (5 points).

The tribe or entity that will develop and operate the business has an acceptable business management system for project development and operation.

c Unsatisfactory (0 points).

The submission does not meet the criteria in paragraph *b*.

(iv) Viability of the Business (excluding microenterprises). The viability of an economic development project will be determined by an analysis of financial and other project related information. Components of the financial analysis are: costs, sources of funds, cash flow projections and financial statements. The applicant must submit: a detailed cost summary, evidence of funding sources; five year operating or cash flow financial projections; and business financial statements for the most recent three year period. For start-up businesses, that are not owned by the grantee, current financial or net worth statements on principal business owners or officers are needed. Financial statements include the balance sheet, income statement and statement of retained earnings.

The information derived from the analysis will be reviewed and compared to local or national industry standards to assess reasonableness of development costs, financial need, profitability, and risk as factors in determining overall project viability. In determining whether a project is viable, the field office will also consider current and projected market conditions and profitability measures such as cash flow return on equity, cash flow return on total assets and the ratio of net profit before taxes to total assets. Sources of industry standards include Marshall and Swift Publication Company, Robert Morris Associates, Dun and Bradstreet, the Chamber of Commerce, etc. Local standards may also be used.

a Maximum (15 points).

Based on the analysis, the project has excellent prospect of achieving viability.

b Moderate (7 points).

The project has an average prospect of achieving viability.

c Low (0 points).

The project has a minimal prospect of achieving viability.

(v) Viability of the Microenterprise. Microenterprises employ five or fewer employees, including the entrepreneur. The viability of a microenterprise will be determined by an analysis of financial and other project related information. Components of the financial analysis are: costs, sources of funds, cash flow projections and financial statements. The applicant must submit: a detailed cost summary, evidence of funding sources; five year

operating or cash flow financial projections and monthly projections until the cash flow is positive; and business financial statements for the most recent three year period. For start-up businesses, current financial or net worth statements on principal business owners or officers are needed. Financial statements include balance sheet, income statement and statement of retained earnings.

In determining whether a project is viable the field office will also consider current and projected market conditions, profitability measures such as net profit to total assets ratio, as well as other information that the field office has that will have an effect on the project's potential viability.

a Maximum (15 points).

1 The project will generate income for the entrepreneur, over a minimum of five years, at or above 125 percent of the annual county average individual income; and

2 Based on the analysis, the project has an excellent prospect of achieving viability.

b Moderate (7 points).

1 The project will generate income for the entrepreneur at or above 100 percent of the annual county average individual income; and

2 The project has an average prospect of achieving viability.

c Unsatisfactory (0 points).

The submission does not meet the criteria in paragraph *b*.

(vi) Leveraging.

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of total project cost	Points
30%+	12
20–29%	8
10–19%	4
Less than 10%	0

b. *Permanent Full-Time Equivalent Job Creation.* Provide total number of permanent full-time jobs expected to be created and/or retained as a result of the project. Provide a summary of job descriptions and skills required. Identify the number and kind(s) of jobs expected to be available to low- and moderate-income persons. (30 points).

(i) CDBG cost per job.

a Maximum (13 points). $15,000 or less.

b Moderate (10 points). $15,001–25,000.

c Low (7 points). $25,001–35,000.

d Unsatisfactory (0 points). $35,001+.

(ii) CDBG cost per job targeted to low- and moderate-income persons.

a Maximum (13 points). $15,000 or less.

b Moderate (10 points). $15,001–25,000.

c Low (7 points). $25,001–35,000.

d Unsatisfactory (0 points). $35,001+.

(iii) Quality of jobs targeted to low- and moderate-income persons.

a Maximum (13 points). $15,000 or less.

b Moderate (10 points). $15,001–25,000.

c Low (7 points). $25,001–35,000.

d Unsatisfactory (0 points). $35,001+.

a The jobs offer wages and benefits comparable to area wages and benefits for similar jobs, provide opportunity for advancement, and teach a transferrable skill; or

b The employer commits to provide training opportunities (submit a description of planned training program).

1 Yes (4 points).

2 No (0 points).

c. *Additional Considerations.* (15 points) A project must meet three of the following criteria to receive 15 points. Maximum 15 points.

(i) Use, improve or expand members' special skills. Special skills are those that members have developed through education, training or traditional cultural experiences (e.g., technical expertise in electronic assembly; making traditional native crafts).

a Yes (5 points).

b No (0 points).

(ii) Provide spin-off benefits beyond the initial economic development benefits to employees or to the community (e.g., create new investment opportunities in the area; provide a consumer product or service not currently available on or near the reservation, or provide an available consumer product or service at a significant reduction in cost).

a Yes (5 points).

b No (0 points).

(iii) Provide special opportunities for residents of federally-assisted housing (e.g., employ residents for maintenance services).

a Yes (5 points).

b No (0 points).

(iv) Provide benefits to other businesses owned by Indians or Alaska natives (e.g., increase their sales).

a Yes (5 points).

b No (0 points).

(v) Loan Repayment/Reuse of CDBG funds. If the business is not tribally owned at least 50% of the CDBG assistance to the business will be repaid to the grantee within a 10 year period. If the business is tribally owned, the tribe agrees within a 10 year period to use funds equal to 50% of the CDBG assistance for eligible activities that meet a national objective. These funds should come from the profits of the tribally owned business.

a Yes (5 points).

b No (0 points).

II. Application Process

(a) An application package may be obtained from the HUD Field Offices of Indian Programs in the following geographic locations:

Region V—Chicago Office of Native American Programs, Housing and Community Development Division, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 353–1684 (all states east of the Mississippi River, plus Iowa and Minnesota).

Region VI—Oklahoma City Office of Native American Programs, CPD Branch, Murrah Federal Bldg., 200 NW 5th Street, Oklahoma City, OK 73102–3202. Telephone: (405) 231–5968 (Louisiana, Kansas, Oklahoma, and Texas, except West Texas).

Region VIII—Denver Office of Native American Programs, Housing and Community Development Division, CPD Staff, First Interstate Tower North, 833 17th Street, Denver, CO 80202–3607, Telephone: (303) 672–5465 (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming).

Region IX—Office of Native American Programs, Region IX, CPD Division, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004–2361, Telephone: (602) 379–4197 (Arizona, New Mexico, Southern California, West Texas).

Office of Native American Programs, CPD Division, Program Management Team (San Francisco), Phillip Burton Federal Bldg. and U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448, Telephone: (415) 556–9200 (Northern California and Nevada).

Region X—Seattle Office of Native American Programs, CPD Division, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, Telephone: (206) 220–5271 (Idaho, Oregon, Washington).

Anchorage Office of Native American Programs, CPD Division 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4135, Telephone: (907) 271–4673 (Alaska).

(b) Completed applications should be submitted to the appropriate HUD Field Office, listed above, from which application information and packages were obtained.

The Telecommunications Device for the Deaf (TDD) number is (202) 708–2565. (This is not a toll-free number.)

(c) Applications may be mailed to HUD, provided that they are postmarked no later than midnight on the deadline date: July 20, 1994. Applications that are physically delivered to HUD must be received by the appropriate HUD Field Office no later than the close of business on July 20, 1994.

III. Checklist of Pre-application and Application Submission Requirements

(a) *Citizen participation.* Prior to submitting an application, the applicant shall certify, by an official tribal resolution, that it has:

1. Furnished residents with information concerning amounts of funds available and the range of activities to be undertaken;

2. Held one or more public meetings to obtain the views of residents;

3. Developed and published or posted a community development statement which gives affected residents an opportunity to review it and comment on it;

4. Given residents an opportunity to review and comment on the applicant's performance under any active community development block grant;

5. Considered public comments and, if the applicant deems it appropriate, modified the application accordingly; and

6. Made the modified application available to residents.

(b) Applicants shall submit an application to the appropriate field office. In accordance with the requirements of Section 571.300(f) the application should include:

1. Standard Form 424;

2. Community Development Statement which includes:

A. Components that address the relevant selection criteria;

B. A brief description or an updated description of community development needs;

C. A brief description of proposed projects to address needs, including scope, magnitude, and method of implementing the project.

D. A schedule for implementing the project (form HUD–4125);

E. Cost information by project, including specific activity costs, administration, planning, and technical assistance, total HUD share (form HUD–4123); and

3. A map showing project location, if appropriate;

4. If the proposed project will result in displacement or temporary relocation, include a statement that identifies (A) the number of persons (families, individuals, businesses and nonprofit organizations occupying the property on the date of the submission of the application (or date of initial site control, if later); (B) the number to be displaced or temporarily relocated; (C) the estimated cost of relocation payments and other services; (D) the source of funds for relocation; and (E) the organization that will carry out the relocation activities.

5. *Citizen Participation.* Certify, in the form of an official tribal resolution, that citizen participation requirements of section 571.604 have been met;

6. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under Subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

IV. Corrections to Deficient Applications

HUD will not accept unsolicited information from the applicant regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official. The field office also may, at its discretion, request information to resolve inconsistencies or ambiguities in the application.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

V. Other Matters

(a) *Environmental Statement.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(b) *Federalism Executive Order.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will 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 between them and other levels of government. While the NOFA will provide financial assistance to Indian tribes and Alaskan native villages, none of its provisions will have an effect on the relationship between the Federal Government and the states or their political subdivisions.

(c) *Family Executive Order.* The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being and thus is not subject to review under the Order.

(d) *Registration of Consultants.* Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule at 24 CFR part 86, particularly the examples contained in Appendix A of the rule.

Any questions regarding the statute described above should be directed to the Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD/Voice. (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(e) *Prohibition of Advance Disclosure of Funding Decisions.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of the applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR 571.

Dated: April 14, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–9604 Filed 4–20–94; 8:45 am]

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Thursday
April 21, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3280

Interpretative Bulletin for Manufactured Home Construction and Safety Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket Nos. R–94–1497; FR–2622–N–06; and R–94–1632; FR–3380–N–05]

24 CFR Part 3280

Interpretative Bulletin for Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of interpretative bulletin.

SUMMARY: HUD published two final rules amending the Federal Manufactured Home Construction and Safety Standards (FMHCSS) on October 25, 1993 (58 FR 54975), and January 14, 1994 (59 FR 2456). Technical corrections for the two rules were published on March 31, 1994 (59 FR 15113). This notice publishes an Interpretative Bulletin that the Department has issued to clarify some aspects of the new standards that have been the subject of questions from the industry and the public.

DATES: Issued April 15, 1994.

FOR FURTHER INFORMATION CONTACT: David C. Nimmer, Director, Office of Manufactured Housing and Regulatory Functions, Department of Housing and Urban Development, 451 Seventh Street SW., ATTN: Mailroom B–133, Washington, DC 20410–8000. Telephones: (voice) (202) 755–7410; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, the following Interpretative Bulletin, which includes the Secretary's finding that it should not be subject to notice-and-comment rulemaking, has been issued by the Department:

Interpretative Bulletin to the Standards

Manufactured Home Construction and Safety Standards 24 CFR Part 3280

Under Section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403, the Secretary of the U.S. Department of Housing and Urban Development ("HUD") is authorized to issue, amend and revoke by order appropriate Federal manufactured home construction and safety standards. On October 25, 1993, (58 FR 54975) and January 14, 1994, (59 FR 2456), HUD published certain changes to the Federal Manufactured Home Construction and Safety Standards for energy conservation standards and new standards for high wind areas, respectively. The effective date of the energy standards is October 25, 1994, while the wind standards are effective on July 13, 1994.

Since the publication of these two rules, the Department has received a number of questions asking for clarification of certain provisions of the rules. Those who requested the clarifications urged the Department to provide a timely response so that industry designers can move forward to revise plans and specifications well ahead of the effective dates of the new standards. HUD recognizes that it is imperative to respond to these requests for clarification as soon as possible to assist Primary Inspection Agencies ("PIAs"), manufacturers and State Administrative Agencies in understanding the changes to the manufactured housing standards well in advance of their effective dates.

Based on these requests for clarifications, discussions with manufacturers and PIAs and the fact that many of the changes to the standards concern issues of public safety, the Department has concluded under 24 CFR 3282.113 of the Manufactured Home Procedural and Enforcement Regulations that the immediate issuance of guidance to address these technical questions is in the public interest and necessary for the orderly redesign of manufactured homes to meet these two standards before their effective date. Therefore, due to the need for expeditious resolution of these issues and due to that fact that this is not a change in the position or policy of the Department but merely involves technical clarifications, the Secretary deems it not to be in the public interest to issue these interpretations for public comment in the **Federal Register** or to otherwise treat this Interpretative Bulletin as rulemaking. The Department is providing this guidance to manufacturers and PIAs so that they can proceed immediately with the redesign of their homes. Where necessary, the Department may provide further assistance in these new standards by letter of clarification or by a new Interpretative Bulletin.

The requested clarifications of the Manufactured Home Construction and Safety Standards have been organized into the following questions and answers. While the majority of the questions relate to the interpretation of the standards, several of the questions relate to the enforcement of the standards.

In addition to those answered below, there are several questions which have been submitted to HUD that require additional technical analysis before a decision can be made. These questions will be addressed in a future Interpretative Bulletin or rulemaking.

Other questions revealed the need for corrections to mistakes within the language of the rules and a few questions raised issues that require additional rulemaking. The editorial corrections were made in a correction document published in the **Federal Register** on March 31, 1994 (59 FR 15113).

I. The Energy Standards

Questions: 1. The Effective date of the rule is October 25, 1994. Does this mean that every home that enters production that day is to be built under the new regulations?

Answer: Yes.

2. 24 CFR 3280.103(b)(2)—Would the required kitchen/bath fans constitute a means of achieving the required 0.10 ACH if automatic timers are used to control the fans? This is what the Bonneville Power Administration, accepts for whole house ventilation for their Super Good Cents Program.

Answer: No. These fans are for spot ventilation and may not effectively change the air in other parts of the home.

3. 24 CFR 3280.103(b)(2)—Does 0.035 cfm/sq. ft. floor area have to be used to calculate the required system capacity, or can 0.10 actual house volume/60 min. be used as an alternative?

Answer: Utilize 0.035 cfm/sq. foot floor area. This formula compensates for the decrease in natural ventilation when ventilation fans are in operation.

4. 24 CFR 3280.103(b)(3)—This section requires whole house ventilation, but limits the positive or negative pressures, depending on the thermal zone. What is meant by "Mechanical systems shall be balanced?"

Answer: The capacity of the intake fans shall be the same as the exhaust fans.

5. 24 CFR 3280.103(b)(3)—Would the equipment for Zones 1 and 2 have to be different? Does this mean a house constructed to Zone 2 insulation cannot be shipped to thermal Zone 1 because of the ventilation system?

Answer: It doesn't have to be different. A Zone 2 home with a balanced mechanical system would be acceptable in Zone 1. Manual or fixed louvers would be acceptable in both zones. One way registers (i.e. those which react to pressure) have to be appropriate to the zone. In Zones 2 and

3, a one way register should be set to relieve a positive interior pressure. In Zone 1, a one-way register should be set to relieve a negative interior pressure.

6. 24 CFR 3280.103(b)(3)—It is also stated that such systems must be "balanced" so as to release any "unbalanced pressure." Isn't it true that a balanced system would not have any positive or negative pressures? Is this two ways of saying the same thing, or are both stipulations necessary?

Answer: Both stipulations are necessary. Please refer to the answers in Questions 4 and 5 for a base reference. A system, for example, is considered balanced when the fan capacities are equal. A passive system is balanced when the system can be expected to release any unbalanced pressure. In actual situations, however, it is recognized that the deliberate movement of air causes unbalanced pressures and this is the reason for the prescription on positive and negative pressures.

7. 24 CFR 3280.103(b)(3)—What kind of mechanical ventilation systems do not create pressure differences? Is the presence of a nearby equivalent passive system enough to say that the system is "balanced"?

Answer: It is recognized that in operation, mechanical systems create unbalanced pressures. Please refer to the answer for Question 6. Where the passive portion of a system is evaluated as the functional equivalent of the mechanical portion, the system is balanced. An equivalent passive system is enough to say the system is balanced. However, if the intake and the exhaust are nearby and there is no provision to circulate the incoming air throughout the house, then there is no whole house ventilation.

8. 24 CFR 3280.103(b)(5)—Would a mechanical system, that works in conjunction with the furnace, and introduces outside air into the home, but does not exhaust inside air, meet the ventilation requirements if bath/kitchen fans can be used to exhaust inside air?

Answer: No. A mechanical system that works in conjunction with the furnace is acceptable; however, bath and kitchen fans are not acceptable for the exhaust.

9. 24 CFR 3280.103(b)(5)—If the answer to the above question is "No", then would adding a separate exhaust fan, in addition to the above system, meet the requirement?

Answer: Yes.

10. 24 CFR 3280.103(b)(5)—Would adding a one-way register (to depressurize the house) meet the requirements?

Answer: Yes; (The one way register should depressurize only in Zones 2 and 3).

11. 24 CFR 3280.103(b)(6)—This section requires a manual control on the ventilation system. 24 CFR 3280.103(b)(5) says the ventilation system may be integral with the heating and cooling equipment. Does this mean that the homeowner must be able to operate the ventilation system independently of the furnace, or can the two share the same controls?

Answer: They can share the same controls and the ventilation system can be designed to operate in conjunction with and simultaneously with the furnace or air conditioner. An automatic control to operate the system independently of the furnace or air conditioner is permitted. However, in all circumstances there must be the capability for the homeowner to operate the system continuously and independently of any other automatic provision.

12. 24 CFR 3280.103(b)(7)—This section says that the ventilation capacity must be substantiated. What types of calculations or tests are acceptable?

Answer: With mechanical ventilation, a fan or fans rated to provide the required cfm is sufficient. Concerning passive systems, rational assumptions and engineering calculations, or tests will be acceptable when based upon recognized principles and practices. For example, ASHRAE Chapter 23 can be used as a resource.

13. 24 CFR 3280.303(g)—Do old, existing tests that are retested for slight material changes have to be submitted to the Department for another review?

Answer: The existing tests do not need to be resubmitted unless:

1. Minor material substitutions were not verified by tests or engineering analysis by a professional engineer or architect as having equivalent or superior strength to the material being replaced; or

2. No follow-up testing has been conducted; or

3. Tests were not witnessed by a licensed professional engineer or architect; or

4. Higher design loads are required to be used by the new wind standards which are effective on July 13, 1994.

14. 24 CFR 3280.303(g)—How will the Department notify other manufacturers of a recently approved protocol? Will a new test protocol be distributed to everyone or will it be considered the property of the developing manufacturer?

Answer: The Department will not usually notify other manufacturers since new protocols are often of a proprietary nature.

15. 24 CFR 3280.303(g)—How will the Department assure the manufacturer of a prompt response to a protocol review? Will the Technical Exchange Group be able to develop protocols and ask the DTAG to approve and distribute them?

Answer: The Department will make every effort to review test protocols promptly in those cases where manufacturers will not be using recognized testing procedures. We do not anticipate that the Technical Exchange Group will be asked to develop test protocols.

16. 24 CFR 3280.504(c)(1)(i)—Does Section 24 CFR 3280.504(c)(1)(i) allow construction of ventilated roof homes without eaves (e.g. single section homes) but with "low roof vents?" If so, is a 1 inch space required between the top of the insulation and the roof sheathing when there is no designed air passage to that point?

Answer: Where eaves or overhangs are not part of the design, low roof vents can be used. However, a 1-inch minimum air space directly underneath the most outboard point of the vent is needed for a fresh air path for the length of the home to insure that the low roof vents function.

17. 24 CFR 3280.504(c)(2)—Would polystyrene or R–5 fiberglass insulation be considered sheathing, if it is installed over the roof truss top chord on metal roof units, and if it is to be used as a sound deadener? The requirement states ". . . homes constructed with metal roofs and having no sheathing or underlayment installed, are not required to be provided with attic or roof cavity ventilation . . . ". Is the above type of roof construction required to be ventilated?

Answer: A rigid polystyrene sheath would be considered a sheathing. Fiberglass batts would not be. The rigid polystyrene sheath would require the roof to be ventilated.

18. 24 CFR 3280.506(a)—"The overall coefficient of heat transmission (Uo) of the manufactured home for the respective zones and an indoor design of 70 °F, including internal and external ducts, and excluding infiltration ventilation and condensation control, shall not . . . " Should there be a comma (,) between infiltration and ventilation? If the answer is yes, does this mean to exclude only the passive and/or active 0.10 air changes per hour referred to in 24 CFR 3280.103(b)(2), and/or does this mean the 0.10 ACH "plus" the natural infiltration and exfiltration of 0.25 ACH referred to in 24 CFR 3280.103(b)? If the answer is no, what does this mean?

Answer: A comma (,) should be between infiltration and ventilation, and the 0.10 ACH and the 0.25 ACH are excluded from the calculation.

19. 24 CFR 3280.508—How is duct loss calculated when duct is located (sic) between the floor insulation and the floor (conditioned area) for single wides? We suggest there is none.

Answer: Refer to paragraph 3.2 of the document "Overall U-values and heating, cooling loads Manufactured Homes". The duct losses for this configuration are not included in the calculation. The space where the duct is located is considered conditioned and the floor deck is not included in the calculation.

20. 24 CFR 3280.508—What is the duct loss factor when the duct is located between the floor insulation and the floor for double wides except for the crossover duct? We suggest 2% of calculated transmission (Uo) loss.

Answer: The external ducts are considered to be a component of the homes. The area of the duct exposed to the exterior and the level of insulation installed are summarized with the overall envelope area. Please note that 24 CFR 3280.506 (a) prevails over paragraph 4.4 of the document "Overall U-values and heating, cooling loads Manufactured Homes".

21. 24 CFR 3280.508—Are people loads (one person per bedroom plus one) and appliance loads (1,200 BTUH) ignored when calculating "maximum" heat loss allowed by the Uo? We assume this is ignored, except when estimating annual energy usage if desirable under 24 CFR 3280.508(f), "Annual Energy Used Based Compliance.

Answer: People loads are not included in the determination of the Uo, when the "Annual Energy Used Based Compliance" method is used (24 CFR 3280.508(b)1). This section says that all heat loss calculations should be consistent with the procedures in the February 1992 document by PNL.

22. 24 CFR 3280.506(a)—24 CFR 3280.506(a) says that internal and external duct losses must be considered. The PNL document does not include duct losses. Will the PNL document be revised to include such losses in the overall Uo heat loss?

Answer: There are no current plans to revise the PNL document. It is subject to change by addition or clarification if there is a need to do so.

23. 24 CFR 3280.508—If external duct losses are to be considered, can the additional area of the cross-over duct be used in the summation of the overall envelope area? If not, it would have to be considered a pure loss.

Answer: The external ducts are considered to be a component of the homes. The area of the duct exposed to the exterior and the level of insulation installed are summarized with the overall envelope area.

24. 24 CFR 3280.508(b)—*Blown Insulation:*—In appendix B (Page b(i) of the PNL document), the R-value of blown insulation is taken at R–2.5 per inch. In the earlier example (Page 4.4), it is shown to be 3.67 per inch. Which is correct?

Answer: The allowed R-value should be determined from the recognized R-value for the product employed.

25. 24 CFR 3280.508(b)—*Insulation in Ceiling:* Regarding the examples on Page 54976, is the R-value in the ceiling the total, "nominal" thickness at the peak? Or is the lesser, "effective", or "installed" value of the insulation in the cavity?

Answer: The "as installed" value is to be used.

26. 24 CFR 3280.508(d)—Section 3280.508(d) provides some potential for offering more value to the consumer by considering high energy efficiency heating and cooling equipment. Home manufacturers ordinarily install heating equipment but most cooling equipment is provided and installed by others. Will HUD allow manufacturers to specify on the data plate or elsewhere that the home is designed for minimum SEER (e.g. 12) air conditioning equipment and calculate the credit based on the design even though we do not actually provide the equipment?

Answer: When the home manufacturer does not provide the cooling equipment, the higher energy efficiency credit cannot be used.

27. 24 CFR 3280.510(b)—The requirement states ". . . . heating equipment will maintain a 70 degree F temperature inside the home *without* storm sash or insulating glass in Zones 1 and 2, and with storm sash or insulating glass in Zone 3 . . . .". Storm windows may be necessary to meet the significantly lower whole house "U" values required in 24 CFR 3280.506(a) for Zones 1 and 2, as well as Zone 3. For these homes, a certification temperature without storms makes no sense. For heat Zones 1 and 2, may the certification temperature be calculated with storm windows if said home is equipped as such?

Answer: Yes; however, if removable storm windows are provided, the heat loss certification temperature will be calculated with the storms removed. For permanently installed double or triple glazing, the temperature may be calculated utilizing the window assembly U-value.

28. 24 CFR 3280.806(b)(1). Receptacle outlets within 6 feet of the kitchen sink are now required to be GFCI. Neither section 210–7 of the NEC nor the NEC 1993 Handbook described the location of the receptacle clearly. How is this 6 feet measured? Is it along the wall behind the counter where the sink is located, or a 6-foot diameter circle at the sink corners, etc. * * *?

Answer: It is measured between the receptacle and the nearest point on the sink. It is a point to point measurement. Refer to Figure 210–14 in the 1993 NEC Handbook. 2.

29. 24 CFR 3280.806(b)(1)—NEC 1993, 550–8(d) requires, "Counter tops shall have receptacles located every 6 feet." Is a receptacle required to be 3 feet or 6 feet from the end of the counter top? Does this mean receptacles are to be 6 feet to 12 feet on center?

Answer: According to 550–8(d), the six foot limit is measured between receptacles for the countertops. If the end of the counter is less than six feet from the receptacle, no additional receptacle is required.

30. 24 CFR 3280.808(r)(1). Is a wall with wooden studs and gypsum paneling considered combustible?

Answer: The purpose of paragraph (r) is to codify existing practice and interpretations concerning the maximum allowable gap. The ⅛ inch gap applies to gypsum paneling as well as plywood paneling.

31. 24 CFR 3280.808(r)(1)—Is the ⅛" gap addressing the size of the hole in the wall paneling? Or is it concerning the clearance of the rear of the box and other combustible materials, such as Lauan paneling? Or is it for both?

Answer: It addresses the size gap permitted in the wall paneling.

32. 24 CFR 3280.103(b)(2)—For whole House Ventilation: How should manufacturers figure the areas of calculation of additional ventilation of 0.10 air changes per hour. The Air Conditioning Contractors of America's Manual J used the conditioned space to determine the required CFM.

A. Do you include the bath and the kitchen volume in the whole house volume?

Answer: Yes.

B. Do you include the partition's volume that surround the bathroom?

Answer: Yes.

C. Do you include the marriage wall and the endwall volume?

Answer: Yes at the marriage wall; no at the endwall.

D. Which dimension, interior or exterior side of walls, do you use to figure the volume of the house?

Answer: The interior side of wall dimension may be used.

33. 24 CFR 3280.805 (a)(3)(iii)—When is an appliance considered to be an "other continuous duty load" as prescribed in amended 24 CFR 3280.805 (a)(3)(iii) for the purpose of adequately rating the appliance circuit?

Answer: In Article 100 of the NFPA–70–1993 (the National Electrical Code) continuous duty is defined as: "Operation at a substantially constant load for an indefinitely long time." To establish what is a constant load for an indefinitely long time, we must refer to the Article in the National Electrical Code for the specific appliance. If the specific requirements call for a branch circuit rating not less than 125% of the nameplate rating, then it is a continuous duty appliance. Some specific examples are: Article 422–14 (b) for water heaters, Article 424–3(b) for heating equipment, and Articles 440–32 and 440–33 for air conditioning.

II. The Wind Standards

Questions: 1. 24 CFR 3280—The effective date is July 13, 1994. Does this mean that every home that enters into the first stage of production on that date is to be under the new regulations?

Answer: Every home entering the first stage of production as of July 13, 1994 must comply with the new wind safety provisions.

2. 24 CFR 3280—In the preamble, page 2457, a statement is made that the Department expects to publish revised wind standards for the rest of the country "next year." That statement may have been written in 1993. Please indicate when the Department expects to publish final regulations for the rest of the country.

Answer: We plan to publish revised wind safety standards for the rest of the country sometime in 1994.

3. 24 CFR 3280.304—On page 2463, the preamble indicates that the final rule permits the use of the 1991 NDS without exception. Please clarify that this reference standard shall be used in redesigning homes for Zones II and III not later than July 13, 1994, and for Zone I (the rest of the country) the standard shall be enforced not later than October 25, 1994.

Answer: The use of the 1991 NDS will be enforced for designs in all Wind Zones, including existing Wind Zone I no later than July 13, 1994.

4. 24 CFR 3280.5(f)—A new data plate entry is specified to indicate that a home has not been designed for ocean/coastal areas, within 1,500 feet of the coastline in Wind Zones II or III, unless it is designed under Exposure D, ASCE 7–88. It would seem that the homeowner will read this and be unsure whether or not the home is designed under either Exposure C or D. Recommend that the data plate so indicate in a positive statement where the home has been designed to be placed, under what exposure.

Answer: The language on the data plate is clear and will avoid placement of homes which have not been designed for the higher design requirements of Exposure D from being installed too close to the coastline.

5. 24 CFR 3280.5(g)—The new data plate statement concerning shutters is in conflict with the requirements of sections 24 CFR 3280.403(f), .404(f), and .405(f). That is, the last sentence of the data plate statement strongly recommends that the home be made ready to be equipped with these devices. However, the sections listed above under Subpart E -Testing (page 2474), say that:

(a) For homes in Wind Zones II and III manufacturers shall design exterior walls (make the homes ready) to allow for installation of protective covers over window and door openings, and

(b) If the manufacturer does not provide protective covers, it must provide homeowner instructions for one method of protecting the openings, and

(c) The instructions shall indicate whether devices, sleeves, or anchors for fasteners have been installed or provided by the manufacturer.

Please modify the new data plate statement to track with these new requirements.

Answer: The new data plate requirements are not in conflict with the provisions of 24 CFR 3280.403(f), .404(f) and .405(f).

6. 24 CFR 3280.303(g)—Staples are not addressed in the 1991 NDS, but they are addressed in UM–25D. Can the 1.6 duration factor for wind from the 1991 NDS be applied to staples?

Answer: The 1.6 load duration factor may not be applied to staples; however, a load duration factor of 1.33 may be used in accordance with UM–25–D.

7. 24 CFR 3280.305(c)(l)(ii)—The new requirement for manufactured home wind loads for high wind areas requires that they shall be designed by a professional engineer or architect. This statement conflicts with an answer in the preamble (page 2465) which indicates that the Department will consider a suggestion for future rulemaking that a professional engineer prepare and certify wind load designs and calculations. Please clarify the new requirement.

Answer: The wind resisting aspects of homes to be located in high wind areas must be designed by a Professional Engineer or Architect as specified by this section of the new wind safety requirements. The statement on Page 2465 of the Preamble should have indicated the Department's decision to require a professional engineer or architect to design homes in high wind areas.

8. 24 CFR 3280.305(c)(1)(ii)—Please specify which designs and calculations shall be sealed by a registered professional engineer or architect. In that there is a DAPIA review of all drawings and calculations, it appears that sealing by a P.E. or architect should be greatly limited.

Answer: As a practical matter, almost all aspects of the manufacturers designs are wind resisting elements and are required to be designed by a Registered Professional Engineer or Architect. This would include, but not be limited to, the following:

a. all structural systems, assemblies, subassemblies or components and their connections or attachments

b. exterior covering and sheathings

c. Window and sliding glass door openings and designs for missile protection

9. 24 CFR 3280.305 (c)(1)(ii)—This section permits the manufactured home to be designed either to option (A): Exposure C, ASCE 7–88, or option (B): The wind pressures in the "Table" in the final rule. We have been advised by the engineering community for the conventional truss industry that truss designs in accordance with ASCE 7–88 are prepared using criteria under "main wind-force resisting systems," rather than under "components and cladding." Please confirm that this standard engineering practice is acceptable for manufactured home trusses where either design options (A) or (B) is selected.

Answer: Trusses are to be designed as "Components" and not as "Main Wind-Force Resisting Elements". The only exception to this would be for a spatial truss framework which is designed as part of Main Frame System. Accordingly, roof trusses are to be designed as "Components" under Subparagraph (A) or by using the design pressures specified in the "Table" in (B).

10. 24 CFR 3280.305 (c)(1)(ii)—The "Table" entry for wall studs incorrectly shows the pressures for "Within 3'0" from each corner" on the line above.

Answer: The "Table" entry for wall studs does contain a typographical error in lining up the Design Pressure with the Element for wall studs "Within 3'0" from each corner of the sidewall and endwall".

11. 24 CFR 3280.305 (c)(1)(ii)—Studs are designed for a lateral load (±38 PSF etc.) and no uplift load is specified.

Does that mean no combined bending and axial tension is necessary for designing studs?

Answer: Wall studs in sidewalls and endwalls are to be designed for combined uplift and lateral loads specified in ASCE 7 or by the Table of Design Wind Pressures.

12. 24 CFR 3280.305 (c)(1)(ii)—For designing roof to wall, wall to floor and floor to chassis connections, what uplift load should be used "anchorage for lateral and vertical stability" or "main wind force resisting system"?

Answer: For designing roof to wall, wall to floor and floor to chassis connections, the lateral and uplift design pressure requirements for Components and Cladding are to be used.

13. 24 CFR 3280.305 (c)(1)(ii)—The following concerns the "Table of Design Wind Pressures" ("Table"):

a. Do the footnotes for the "Table", such as no. 6 on shingle exemption, no. 7 the roof sheathing exemption, and no. 8 the exterior coverings exemption, also apply if method (A), using ANSI/ASCE 7–88, is used instead?

b. Note 4 limits the "Table" to 10 degrees (nominal 2/12) minimum roof slope. Does this mean that they do not apply to a bowstring type roof?

c. If a designer follows ANSI/ASCE 7–88 in method (A), can he ignore the prescriptive element of double trusses in the last 3 feet and have trusses designed accordingly?

d. What are the uplift loads on a porch open on three sides? Are they different if the porch is only open on two sides (as on the end of a multi-section unit)? Do either of these porch configurations have the special 3-foot zones of increased wind pressure (or suction) the walls?

e. Do each of the corners (looking at the plan view) of a double section unit with an offset section have the 3-foot zones as far as wall pressures are concerned, or do these zones only apply to the "outside" corners? Or do these zones only apply to the intersections of the endwalls and sidewalls?

f. Concerning bay windows, walk-a-bays, bow windows: do these experience the increased uplift on the roof? Do they count as part of the 3-foot roof zone?

Answers: a. The footnotes on exterior coverings do not apply if Method (A) is used. All exterior coverings and fastenings must be completely designed for the design load provisions of ASCE 7–88.

b. Truss configurations such as bow-string designs with slopes less than 10 degrees are not covered by the "Table".

c. Yes.

d. The uplift design pressures for a 3 sided open porch would be the same as for eaves or gables depending on their location (sidewall or endwall). A porch open on two sides at the end of multi-wide section would be designed for gable loads. Both of these configurations would also be required to be designed for the higher pressures in the 3'0" Zones if located within 3'0" of the corners.

e. The 3'0" regions apply to all corners including offset sections and all other conditions cited by the question.

f. Bay windows, walk-a-bays and bow windows are part of the 3'–0" roof zone unless they are significantly offset below the roof or the roof of the unit completely extends over those projections.

14. 24 CFR 3280.305(c)(1)(ii)—In Zones II and III, under what conditions may a manufacturer meet Exposure B, ASCE 7–88? (e.g. when a home is permanently sited and the authority having jurisdiction verifies the Exposure B authenticity)?

Answer: There are no conditions in Wind Zones II and III for which a home can be designed for Exposure B, ANSI/ASCE 7–88.

15. 24 CFR 3280.305(c)(1)(ii)—In Alaska, which counties are in Zone III?

Answer: There are no defined boundaries for Wind Zone III other than the 90 mph isotach in ANSI/ASCE 7–88 and identified in the Basic Wind Zone Map.

16. 24 CFR 3280.305(c)(1)(iii)—There are many questions concerning recessed entries in Zones II and III if the "Table" is applied:

a. Do the corners of a recessed entry have the 3 foot zones of higher cladding loads for walls?

b. Does the soffit of a recessed entry experience a negative suction? If so, what is the value?

c. Does the soffit of a recessed entry experience a positive pressure, acting upward? If so, what is the value? If so, is this upward pressure an additional load on the roof truss supporting the soffit, or is the truss loading still the same without the recessed entry?

Answers: a. The corners of walls at recessed entries within 3'0" of endwalls are to be designed for the 3'–0" wall corner design pressures in the "Table". However, recessed entries which are more than 3'–0" from the endwall and bounded on three sides need not be designed for the higher wall corner loads.

b. Soffits of a recessed entry are to be designed as eaves or gables for the design pressures specified in the "Table".

c. Soffits of recessed entries are to be designed for the eave or gable load requirements of the "Table" as positive pressures acting upward. For the recessed entry area, no additional design pressures are required for evaluation of roof trusses, other than the design pressures for eaves and gables as indicated in b. above.

17. 24 CFR 3280.305(c)(2)(ii)—Table of Design Wind pressures—As indicated by Footnote #8, exterior coverings that are secured at 6" o.c. to a ⅜" structural rated sheathing that is fastened to wall framing members at 6" o.c. need not be evaluated for the design wind pressures shown in the "Table". We assume that the 6" o.c. fastening schedule for both structural sheathing and exterior coverings are measured 6" o.c. vertically along the studs. Please confirm this assumption.

Answer: Footnote 8 requires fasteners to attach from the exterior covering to the structural sheathing at 6" o.c. in both vertical and horizontal directions. However, fasteners need only be installed at 6" o.c. from the structural sheathing to wall framing members (plates, studs, jamb studs, headers). For vertical wall and jamb studs the orientation of the 6" o.c. spacing is in the vertical direction.

18. 24 CFR 3280.305(c)(2)(ii)—"Table" of Design Wind pressures—What is the wind uplift value to be used for stud and jamb stud interaction calculations?

Answer: The design uplift forces to be resisted by studs and jamb studs are the combined uplift loads from the "Table" for trusses (including corner loads from doubling of trusses), and any roof projections (eaves, gables, recessed areas, porches).

19. 24 CFR 3280.305(c)(2)(ii)—"Table" of Design Wind pressures—The 6" o.c. fastening requirement for exterior wall coverings, as indicated by footnote no. 8 under the "Table" of Design Wind Pressures on page 2470 of **Federal Register**, may pose some difficulties in some cases. For example, how can we fasten the ⅜" sheathing through vertical straps positioned at studs? Double penetration of straps will weaken its holding capability. The problem is compounded by the installation of a final exterior covering that must also be fastened based on 6" o.c., somehow staggered to miss the ⅜" sheathing fasteners and the strap fasteners under the sheathing.

Answer: Fasteners may be staggered at vertical straps to facilitate installation of wall and sheathing coverings and to avoid damage to the strapping material.

20. 24 CFR 3280.306(d)—If over-the-roof ties are required, because that may

be the only way to resist the load, it is not clear that diagonal ties would not be required at each vertical tie location along the mating line of multi section homes. This requirement needs further clarification.

Answer: Diagonal ties need not be provided at each vertical over-the-roof tie location along the marriage line of multiple section homes, if all design wind forces can be transferred across the mating line by the over-the-roof ties and site connections between the units specified in the manufacturer's instructions. Additional information on this subject is provided in our response to Question 26.

21. 24 CFR 3280.305(e)(2) —A new prescriptive requirement for steel strapping for brackets to fasten walls to floors or roof trusses, shall have a maximum spacing of 24 inches on center for Wind Zones II and 16 inches on center for Wind Zone III. From a practical standpoint, the fasteners generally must be placed over studs. Where trusses are not aligned over studs, please confirm that stud-to-truss connections do not have to be direct, provided that indirect load transfers are substantiated.

Answer: Trusses in homes designed for Wind Zones II and III must be aligned over studs for direct connection of the 26 gage metal strapping or brackets required by this section. Trusses may not be offset from studs except where they are added to provide reinforcement or as otherwise required by the design.

22. 24 CFR 3280.305(e)(2)—We want to advise you that since nails will be driven mechanically through the 26-gage straps, their rejection may result in severe injuries to the operator. Therefore, we may have to pre-drill holes through straps and ⅜" sheathing and hand drive fasteners, or use a stronger gun and bigger fasteners.

Answer: It would appear that it may be necessary to pre-drill holes or use larger sized guns or thicker fastener gages to penetrate the 26 gage strapping materials.

23. 24 CFR 3280.306(f)—Revised section 24 CFR 3280.306(d) requires manufactured homes designed for Wind Zones II and III have a supplemental vertical tie installed at each diagonal tie location. A written interpretation is needed to confirm the following:

A. The connection of the vertical strap to the home should be designed for the vertical component of the manufacturer's calculated diagonal tie load (which corresponds with its anchorage instructions). The connection to the home is not required to be designed for 3,150 pounds (4725 pounds ultimate). The vertical strap design on "Table" D2 of HUD's Regulatory Impact Analysis (RIA) agrees with this assumption. 10—#8 screws per strap calculates to approximately 1,500 pounds per vertical tie.

Answer: Connections of vertical ties to wall framing members need not be designed for the 3,150# working load requirements of the tie itself provided the fastening system and the member to which it is attached are capable of resisting the calculated design load imposed on the vertical tie.

B: The connection of the vertical strap may be located at the I-Beam, provided that the floor-to-frame connection is substantiated. In some designs this may be the preferred location (e.g. 5' o.c. diagonal tie spacing with a 6' patio door at sidewall).

Answer: Vertical ties may be provided under the main chassis beams provided the design has considered the transfer of all loads assuming the vertical tie to be positioned under the I beam.

24. 24 CFR 3280.306(f)—Since the Department will now require a vertical tie at each diagonal tie for Wind Zones II and III, how does HUD envision that ties will be properly secured to wall members so that the attachment point on the manufactured home is capable of resisting the tie allowable working load of 4,725 pounds?

Answer: Vertical ties can be installed as continuous ties or connected to wall framing members by mechanical fasteners. Additional information on this subject is provided in our response to Question 23.

25. 24 C.F.R. 3280.306(c)(2), (d) and (f)—Taken together 24 CFR 3280.306(c)(2), (d) and (f) could mean that HUD staff anticipates over-the-roof straps at each diagonal tie. If so, what is the purpose of 26-gauge uplift straps and stronger trusses?

Answer: Vertical ties are required to be positioned at each diagonal tie for gross stability against overturning. The ties between the roof and sidewall are required to resist the high localized uplift forces and to prevent roof system failures and separation from the wall system.

26. 24 CFR 3280.306 (f) —Please also confirm that a diagonal tie is not required at each vertical tie, both on the perimeter and along the marriage wall.

Answer: For anchoring systems used with multiple section units, vertical and diagonal ties may not be required at the marriage wall provided all wind forces can be designed to be transferred across the mating line without their use. However, diagonal and vertical ties are mandatory at the perimeter or exterior sidewall.

27. 24 CFR 3280.306 (f)—We would also like permission to fasten a vertical tie at the I-beam, provided that the floor-to-frame connection is substantiated.

Answer: Vertical ties may be provided under the main chassis beams provided the design has considered the transfer of all loads assuming the vertical tie to be positioned under the I beam.

28. 24 CFR 3280.403(f), 404(f) and 405(f): The manufacturer is to specify at least one method of protecting exterior openings, without taking the home out of conformance with the standards. How does the Department envision that a manufacturer might take the home out of conformance with the standards when it designs exterior walls surrounding exterior openings to allow for the installation of shutters or protective covers?

Answer: One example of how a home could be taken out of conformance with the Standards is to reduce the capacity of wall framing members due to excessive fastening patterns or large holes needed to install the shutters or protective covers.

Dated: April 15, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

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Part V

Department of Housing and Urban Development

Office of the Secretary

NOFA for Lead-Based Paint Hazard Control in Priority Housing; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–94–3735; FR–3643–N–01]

NOFA for Lead-Based Paint Hazard Control in Priority Housing

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of funding availability.

SUMMARY: This notice announces the availability of funding of $142 million for a grant program for States and local governments to undertake lead-based paint hazard control in priority housing. Approximately 25–30 grants of $1 million–$6 million each will be awarded in FY 1994. The grant sum requested by applicants must be based on the total for all years of the proposed project. This document includes information concerning the following:

(1) The purpose of the NOFA, eligibility, available amounts, and selection criteria;

(2) Application processing, including how to apply and how selections will be made; and

(3) A checklist of steps and exhibits involved in the application process.

Appendices to the NOFA identify relevant regulations and guidelines referenced throughout the NOFA, define "administrative costs", provide a sample diagram for showing an applicant's sources and uses of the grant funds, set forth requirements for a State certification program, list eligible HUD housing programs, provide requirements for the Comprehensive Housing Affordability Strategy (CHAS), and set out a relevant statutory provision. (Note: Responsibility for Category II grants as described in the previous NOFA has been transferred to the Environmental Protection Agency.)

DATES: An original and two copies of the completed application must be submitted no later than 3:00 P.M. (Eastern Time) on July 5, 1994. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after its deadline. Applicants should take this factor into account and make early submission of their materials to avoid loss of eligibility brought about by unanticipated delays or other delivery-related problems. Section 5 of this NOFA provides further information on what constitutes proper submission of an application.

ADDRESSES: Application kits may be obtained from the Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, room B–133, 451 Seventh Street, SW., Washington, DC 20410, or by phoning 1–800–RID–LEAD (1–800–743–5323). Completed applications should be submitted to this same address, and may not be faxed.

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.

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Section 1. Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2539–0005.

Section 2. Definitions

The following definitions apply to this grant program:

Abatement—Any set of measures designed to eliminate lead-based paint hazards permanently in accordance with standards established by appropriate Federal agencies. The term includes:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-based painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(2) All preparation, cleanup, worker protection, disposal, and post-abatement clearance testing activities associated with such measures.

Administrative Costs—(See Appendix B of this NOFA for a detailed definition.)

Applicant—A State or a unit of general local government with an approved Comprehensive Housing Affordability Strategy (CHAS) that applies for funding under this NOFA.

Certified Contractor—A contractor, inspector, or supervisor who has successfully completed a training program certified by the appropriate Federal agency and has met any other requirements for certification or licensure established by such agency or who has been certified by any State through a program which has been found by such Federal agency to be at least as rigorous as the Federal certification program outlined in Appendix E. All lead-hazard detection or reduction work shall be performed by workers and supervisors who have passed a Federal training program or a State training program found by such Federal agency to be at least as rigorous as the Federal program.

Certified Inspector—Included in the definition of "certified contractor," above.

Clearance Testing—A HUD-required testing procedure that must be passed before a dwelling unit may be reoccupied. The unit must undergo a wipe test showing that it has lead dust levels below HUD's maximum allowable standards for floors (200 μg/sq. ft.

(micrograms/square foot)), window sills (500 µg/sq. ft.), and window wells (800 µg/sq ft.).

Encapsulation—A method of abatement that involves the coating and sealing of surfaces with durable, surface coatings specifically formulated to be elastic, able to withstand sharp and blunt impacts, long-lasting, and resilient, while also resistant to cracking, peeling, algae, fungus, and ultraviolet light, so as to prevent any part of lead-containing paint from becoming part of house dust or otherwise accessible to children. Paint is not an encapsulant.

Enclosure—The resurfacing or covering of surfaces with durable materials such as gypsum board or paneling, and sealing or caulking the edges and joints so as to prevent or control chalking, flaking, peeling, scaling, or loose lead-containing substances from becoming part of house dust or otherwise accessible to children.

Federally Assisted Housing—Residential dwellings receiving project-based assistance under programs including:

(1) Section 221(d)(3) or section 236 of the National Housing Act;

(2) Section 1 of the Housing and Urban Development Act of 1965;

(3) Section 8 of the United States Housing Act of 1937; or

(4) Sections 502(a), 504, 514, 515, 516, and 533 of the Housing Act of 1949.

Hazardous Waste—Liquid or solid waste, or combination of solid wastes, which because of its quantity; concentration; or physical, chemical, or infectious characteristics may:

(1) Cause, or significantly contribute to, an increase in mortality or in serious, irreversible, or incapacitating illness; or

(2) Pose a substantial current or potential hazard to human health or the environment, when improperly treated, stored, transported, disposed of, or otherwise managed.

HEPA—(High efficiency particulate accumulator)—A vacuum cleaner fitted with a filter capable of filtering out particles of 0.3 microns or greater from a body of air at 99.97 percent efficiency or more.

Interim Controls—A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Interim Guidelines—HUD's manual of lead-hazard control practices: "Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing," published 55 FR 14556 (April 18, 1990), and revised 55 FR 39874 (September 28, 1990) and 56 FR 21556 (May 9, 1991).

Laboratory Accreditation—A laboratory that has been approved by a State or other accrediting agency to perform analyses of lead in paint and dust and whose approval is consistent with any criteria established by the Environmental Protection Agency.

Lead-Based Paint Hazard—Any condition that causes exposure to lead from:

(1) Lead-contaminated dust;

(2) Lead-contaminated soil;

(3) Lead-based paint that is deteriorated;

(4) Lead-based paint present in accessible protruding surfaces that can be chewed or mouthed by children under six;

(5) Lead-based paint present in friction surfaces; or

(6) Lead-based paint present in impact surfaces, such that the exposure would result in adverse human health effects as established by the Environmental Protection Agency.

Lead-Contaminated Soil—Bare soil on residential real property that contains lead at or in excess of the level determined to be hazardous to human health by the appropriate Federal agency.

Lead-in-dust—Interior house surface dust that contains an area concentration of lead that may pose a threat of adverse health effects in pregnant women or young children. A hazard exists if concentrations exceed the maximum acceptable standards: 200 µg/sq. ft. on floors, 500 µg/sq. ft. on window sills, and 800 µg/sq. ft. on window wells.

Priority Housing—Target housing that qualifies as affordable housing under section 215 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745). (See Appendix D for a list of HUD's programs and their eligibility or ineligibility as priority housing.) The term does not include any public housing (whether Federal or locally supported), any federally owned housing, or any federally assisted housing except tenant-based housing that receives assistance under sections 8(b) or 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(b) or (o)).

Replacement—A strategy of abatement that removes components such as windows, doors, and trim that have lead-based painted surfaces, and installs new or de-leaded components free of lead-based paint.

Residential Dwelling—This term means either:

(1) A single-family dwelling, including attached structures, such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each unit is, or is intended to be, used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk Assessment—An on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(2) Visual inspection;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Other activity as may be appropriate; and

(5) Provision of a report explaining the results of the investigation.

State Certification Program—(See Appendix E for extended discussion.)

Substrate—The material to which a coating such as paint is applied. Residential substrates are usually wood, plaster, masonry, gypsum board, or metal, including components such as doors and door frames, windows and window trim, other trim, walls, ceilings, cabinets, and other built-in storage.

Surface—The outer or topmost boundary of a substrate.

Target Housing—Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the housing for the elderly or persons with disabilities) or any 0-bedroom dwelling. In the case of jurisdictions that banned the sale or use of lead-based paint prior to 1978, the Secretary, at the Secretary's discretion, may designate an earlier date.

Testing—The measurement of lead in painted surfaces by Federal- or State-certified personnel using a portable X-ray fluorescence analyzer, laboratory analysis of paint samples, or other method approved by HUD.

Title X—The Residential Lead-Based Hazard Reduction Act of 1992 (title X of Pub. L. 102–550, approved October 28, 1992).

Trained Worker—A worker who has successfully completed a Federal or State-accredited lead-based paint training program that is at least as protective as the Federal Certification Program Standards outlined in Appendix E.

Wipe Test—The testing of a surface for the presence of lead dust by the patterned wiping of the surface,

followed by analysis of the wipe by atomic absorption spectroscopy, giving the result in micrograms of lead per square foot of surface. For clearance purposes, a sample of floors, window sills and window wells shall be tested in accordance with HUD's Interim Guidelines. The guidelines also require that for clearance all surfaces shall have less than the maximum allowable concentration standard of 200 µg/sq.ft on floors, 500 µg/sq.ft on window sills, and 800 µg/sq.ft on window wells. Also see the definition for "Clearance Testing."

XRF Analyzer—A portable instrument that determines lead concentration in milligrams per square centimeter (mg/cm2) using the principle of x-ray fluorescence. The instrument may measure mean lead content or lead content plus a spectrum of other elements. The instrument shall be used in accordance with the rules for interpretation of the XRF sampling data for multifamily or scattered-site housing, as provided in the HUD Interim Guidelines.

Section 3. Purpose and Description

3.1 Purpose and Authority

Hazard-control grants are to assist States and local governments in undertaking programs for the evaluation and reduction of lead-based paint hazards in priority housing for rental occupants and owner occupants. (Appendix D lists HUD-associated housing programs that may have dwellings that meet the definition of priority housing.) One-hundred forty-two million dollars ($142 million) will be available to fund 25–30 grants of $1 million to $6 million, each. The amounts are for the total, multiyear work of a proposed project. Grants are authorized under section 1011(a-f) of Title X.

The purposes of this program include: (a) Implementation of a national strategy, as defined in Title X, to build the infrastructure necessary to eliminate lead-based paint hazards in all housing, as widely and expeditiously as possible;

(b) Encouragement of effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction;

(c) Expeditious mobilization of national resources, involving cooperation among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards; and

(d) Promoting job training, employment, and other economic lift opportunities for lower income residents of the project neighborhoods.

3.2 Background

Lead is a powerful toxicant that attacks the central nervous system and is particularly damaging to the neurological development of young children. Pregnant women can transfer lead through the placenta to the fetus. Lead-based paint (LBP) is one of the major sources of lead in the environment. In addition to paint, lead may be found in dust, soil, drinking water, food, emissions from leaded gasoline combustion, and industrial emissions. Human exposure to lead is found by testing blood for the presence of lead.

Based upon a national survey conducted in 1990 for HUD's *Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing* report (see Appendix A), approximately 57 million privately owned and occupied housing units built before 1980 have some lead-based paint inside or outside the dwelling. The 57 million units represent just over half of the nation's existing housing stock, and 74 percent of the dwellings built before 1980. The figures for dwellings having lead-based paint rise to 80 percent of dwellings built before 1960, and to 90 percent of those built before 1940. In addition, the older homes show both a greater concentration of lead in the paint and more areas with lead-based paint.

An estimated 9.9 million of the 57 million units are occupied by families with children under the age of six, who are most at risk. Of these, about 3.8 million units have hazards requiring prompt attention, such as peeling lead-based paint, excessive amounts of lead dust, or both. Approximately half of these units are occupied by families with incomes lower than the national median.

HUD has been actively engaged in a number of activities relating to lead-based paint as a result of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801–4846 (LBPPPA). The recently enacted Title X provides major new initiatives and more detailed requirements for this NOFA. (Appendix A identifies relevant Federal regulations and guidelines referred to in this NOFA.)

The *Comprehensive and Workable Plan* described the magnitude of the problem of lead hazards in private housing and set forth a comprehensive strategy for reducing this threat. Also in 1990, HUD developed the first set of guidelines to be used nationally for abating lead paint in public housing (see Interim Guidelines, Appendix A). The guidelines are now being used in the Department's public housing modernization program, and an update to account for new knowledge and technology is underway.

In April 1989, HUD and the Environmental Protection Agency (EPA) executed a Memorandum of Understanding (MOU) on Lead-Based Paint. This MOU has become the basis for interagency cooperation, including a HUD–EPA Interagency Task Force on Lead-Based Paint. As another result of interagency cooperation, EPA, with assistance from HUD and the Centers for Disease Control (CDC), operates a National Clearinghouse and Tollfree Hotline on lead poisoning 1–800–LEADFYI (1–800–532–3394).

3.3 Allocation Amounts

(a) *Amounts.* Under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1994 (Pub. L. 103–124 approved October 28, 1993) (Appropriations Act), $150 million was appropriated for this program, including small set-asides for research and development.

(b) *Residual Funds.* In the selection process, once available funds have been allocated to meet the full requested amounts of the top eligible applicants, HUD reserves the right, successively, to offer any residual amount as partial funding to the next eligible applicant. Such applicant(s) shall have not more than 48 hours to accept, or to decline and reapply in the next round, provided HUD, in its sole judgment, is satisfied that the residual amount is sufficient to support a creditable, though reduced effort by such applicant(s).

(c) *Geographic Diversity.* Because lead-based paint is a national problem, it is critical that these funds be used in a manner that maximizes the number of housing units in which lead-hazard control occurs, that stimulates cost-effective State and local approaches that can be replicated in as many settings as possible, and that disperses the grants as widely as possible across the nation. HUD expects to award 25 to 30 grants of $1 million to $6 million each. Grantees shall be reimbursed, in accordance with a schedule to be included with the applicant's proposal and approved by HUD.

3.4 Eligibility

Title X specifies the following eligibility requirements for grants to evaluate and reduce lead-based paint hazards in priority housing:

(a) *Eligible Applicants.* A State or unit of local government that has an

approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 (42 U.S.C. 12705) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) is eligible to apply for a grant. (See Appendix F) However, applicants are advised that in selecting grantees under this NOFA, the Secretary is unlikely to select applicants that were previously funded under the FY 1993 NOFA, issued June 4, 1993 (58 FR 31848). This selection decision will be pursuant to the Secretary's authority to ensure geographic distribution, to ensure available funds are used effectively to promote the purposes of Title X. (See Section 4.3, Rating Factors, for additional discussion of this consideration for selection.)

(b) *Certified Performers.* Funds shall be available only for projects conducted by contractors and inspectors who are certified, and workers who are trained, through a federally or State-accredited program that is at least as protective as the Federal certification program standards outlined in Appendix E to this NOFA.

(c) *Eligible Activities.* The following direct and support activities are eligible under this grant program:

(1) *Direct Project Elements* (whether activities of the grantee or subgrantees or other subrecipients):

- Inspection and testing of housing constructed prior to 1978 to determine the presence of lead-based paint, lead dust, or leaded soil through the use of portable X-ray fluorescence analyzers or approved laboratory analyses and lead dust through wipe testing.
- Abatement of lead-based paint hazards, including soil, by means of removal, enclosure, encapsulation, or replacement methods.
- Less-than-full-abatement techniques for programs that apply a differentiated set of resources to each unit, dependent upon conditions of the unit and the extent of hazards.
- Temporary relocation of families and individuals during the period in which hazard control is conducted and until the time the affected unit receives clearance for reoccupancy.
- Blood testing of children under the age of six residing in units undergoing inspection or hazard control.
- Blood testing and air sampling to protect the health of the hazard-control workers, supervisors, and contractors.
- Other housing rehabilitation activities under this program that are specifically required to carry out effective abatement and without which the abatement could not be effected. Grant funds from this program may also be used for the lead-based paint hazard-control component in conjunction with other housing rehabilitation programs.
- Pre- and post-hazard control dust-wipe testing and analysis.
- Engineering and architectural costs that are necessary to, and in direct support of, abatement.
- Interim control of lead-based paint hazards priority housing.
- Establishment of a community education program on lead hazards.
- Liability insurance for lead-hazard control activities.
- Data collection, analysis, evaluation, and preparation of a case study at the conclusion of grant activities. This direct project activity includes compiling and delivering such data as may be required by HUD's independent evaluation and research program. For estimating purposes, an applicant must devote 3 percent of the total grant sum for this purpose (this 3 percent does not include the testing costs required). Note that this function is *not* included in administrative costs, for which there is a separate 10 percent limit.
- Performing risk assessments and inspections in priority housing.

(2) *Support Elements:*

- Administrative costs of the grantee (maximum of 10%; (see Appendix B for definition).
- Program planning and management costs of subgrantees and other subrecipients.
- For Local Governments only (for States, the following activities may be undertaken as direct project elements):

(i) Contributions to the State for the establishment of State data collection mechanisms to collect and publish data on the extent of all public and private lead-hazard control activities in the State, including numbers and dollar volume of activities and number and kinds of certified performers;

(ii) Contributions to the State for the establishment of State funding mechanisms to assist testing and abatement efforts, with particular emphasis on assistance to priority housing; and

(iii) Contributions to the State and/or County for the State and/or County Government to design and develop standard land-record mechanisms to be used by county governments to record permanently, property-by-property, the completion and approval of lead-hazard testing and reduction activities, so that future occupants or purchasers may be better informed of the lead-hazard condition of the property. The land-record mechanism is likely to need some means of record compression, mass storage, and ease of user access, as well as an identification of the lead-hazard control method (permanent abatement, partial abatement, or interim control), and should trigger a notice to housing inspection officials upon the occurrence of the expected expiration of the effectiveness of a less-than-permanent abatement method.

(d) *Ineligible Activities.* Grant funds shall not be used:

(1) To purchase capital equipment, except for XRF analyzers when it can be demonstrated that there are no XRF analyzers available locally. If purchased, the XRF analyzers shall remain the property of the grantee at the conclusion of the project. Funds may be used, however, to rent equipment specifically for the abatement project. If leased equipment, other than XRF analyzers, becomes the property of the grantee as the result of a lease arrangement, the leased equipment becomes the property of the Federal government at the end of the grant period. However, that form of lease arrangement should be avoided whenever a less expensive, straight-lease arrangement is possible; or

(2) For chelation or other medical treatment costs. Funds used to cover these costs may be counted as part of the required local matching contribution, but must be obtained from other sources.

3.5 Limitations on the Use of Assistance

(a) Grant funds are to be used to evaluate and reduce the hazards of lead-based paint in residential units constructed prior to 1978. However, if the jurisdiction has banned the sale or use of lead-based paint prior to 1978, the applicant jurisdiction may request the Department to designate an earlier date. These units must be priority housing, as defined in this NOFA.

(b) Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), grant funds may not be used for properties located in the Coastal Barrier Resources System.

(c) Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), grant funds may not be used for construction, reconstruction, repair or improvement of a building or mobile home, including lead-based paint abatement that involves permanent containment or encapsulation of lead-based paint or replacement of lead-painted surfaces or fixtures or interim control measures that involve repairs, on properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program in

accordance with the applicable regulations (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(2) Flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). Applicants are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(d) The National Historic Preservation Act of 1966 (16 U.S.C. 470) (NHPA) and the regulations at 36 CFR part 800 apply to the abatement activities that are to be undertaken pursuant to this NOFA. HUD is responsible for satisfying the obligation to make a historic preservation finding under section 106 of the NHPA and the regulations. Recipients are to assist HUD in making the required findings by providing information to document the determination. This information includes the address of the property, and either a complete description of the activities to be carried out or an indication that no external changes are proposed and the property is not listed on the National Register of Historic Places or eligible for inclusion on the National Register (as required by section 106 of the NHPA). In the alternative, the recipients may provide evidence of consultation with the State Historic Preservation Officer (SHPO).

(e) The applicant shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655). These policies are described in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. No displacement (a permanent, involuntary move) is anticipated. However, to preclude avoidable claims for relocation assistance, all occupants (owner and tenants) shall, as soon as feasible, be notified in writing that they will not be displaced by the lead-based paint hazard-control program. In most cases tenants and owner-occupants will be required to relocate *temporarily* to permit the lead-based paint hazard-control program to be carried out. All conditions of the temporary relocation must be reasonable. The policy regarding temporary relocation costs for owner-occupants who elect to participate in hazard-control is a matter of grantee discretion. With respect to tenants who will be required to relocate temporarily, at a minimum the tenant shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs at that housing; and

(2) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period; the reimbursement provisions of paragraph (g)(5)(A) of this section; and information on a resident's rights under the Fair Housing Act.

(f) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*) (RCRA), administered by the EPA, shall govern all waste disposal resulting from abatement.

(g) The applicant shall observe the procedures for worker protection established in Chapter Eight of the Interim Guidelines. To the extent that the Occupational Health and Safety Administration (OSHA) requirements at 58 FR 26590 (May 4, 1993), or any other OSHA requirements published prior to the start of actual abatement work at any individual project site, are more stringent than the Interim Guidelines, those more stringent OSHA standards shall govern.

(h) Abatement methods that will not be allowed are: open-flame burning, dry scraping, uncontrolled abrasive blasting, machine sanding without HEPA attachments or use of chemicals containing methylene chloride. The applicant is cautioned that methods that generate high levels of lead dust, such as abrasive sanding, shall be undertaken only with requisite worker protection, containment of dust and debris, and suitable clean-up.

3.6 Environmental Review

Because it is likely for many applicants that at the time of application submission, only neighborhoods or other locators of the housing to be abated will be known, rather than specific properties, the Department has determined that it will perform an environmental review in accordance with 24 CFR part 50 at the time each property is proposed for abatement under the grant, rather than before HUD approval of the grant.

HUD's environmental review will be limited to satisfying its obligation to make an historic preservation finding under section 106 of the NHPA and the implementing regulations. HUD has determined that lead-based paint abatement falls within a categorical exclusion (see 24 CFR 50.20(c)) from review under the National Environmental Policy Act and is not subject to the remaining authorities listed in 24 CFR 50.4, with the exception of the funding limitations under the Coastal Barrier Resources Act and the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. The applicant is responsible for compliance with these funding limitations and flood insurance purchase requirements.

3.7 Objectives and Requirements

(a) *Generally.* Grantees will be afforded considerable latitude in designing and implementing the methods of lead-based paint hazard control to be employed in their jurisdictions. HUD is interested in promoting innovative and creative approaches that result in the reduction of this health threat for the maximum number of low- and moderate-income residents, and that demonstrate replicable techniques that are better, faster, less expensive, or more effective than current practices. Flexibility will be allowed within the parameters established below. *It is critical that procedures for all phases of testing and abatement be clearly established in writing in the planning stage, and then adhered to by all applicants, recipients, and their contractors.* It is only in this manner that research and evaluation of the safety and cost-effectiveness of the methods employed can be undertaken.

Proposed methods requiring a variance from the standards or procedures cited below will be considered on their merits in a separate HUD review and approval process after the grant award is made and a specific justification has been presented. If a grant application is dependant on a variation from the procedures cited below, but otherwise is of award quality, it will be made as a conditional grant, subject to approval of the request for variation. When such a request is made, either in the application or during the planning phase, HUD intends to consult with experts from both the public and private sector as part of its final determinations and will document its findings in an environmental assessment. Approval of any proposed modifications will not involve a lowering of standards that would have a potential to affect adversely the health of residents or workers.

(b) *Testing—data collection.* Grantees will be required to collect the data necessary to document the various methods employed in order to determine the relative cost and effectiveness of these methods in reducing lead-based paint hazards. Pre- and post-abatement environmental sampling and blood testing of children

under the age of six shall be a major determinant of effectiveness.

(c) *Testing—schedule.* In developing the application cost proposal, applicants shall include costs for the testing cycle for each dwelling that will undergo lead-based paint detection and hazard control, as follows:

(1) *XRF on-site (or supplementary laboratory) testing:* Pretest every room or area in each dwelling unit planned for hazard abatement;

(2) *Blood testing:* Of each occupant who is a child under six years old, according to the following schedule:

(A) Pretest before abatement work begins;

(B) Test within 4 weeks of reoccupancy after completion of work, and at 6- and 12-months after reoccupancy is optional.

(3) *Dust testing:* Of every room or area in each unit, according to the following schedule:

(A) Pretest before abatement work begins;

(B) Clearance testing before reoccupying an abated unit; and

(C) Test at 12-months after the unit is reoccupied.

(d) *Testing—guidance.* (1) *Generally.* All testing and sampling shall conform to the HUD Interim Guidelines. Note that it is particularly important to provide this full cycle of testing for less-than-full-abatement hazard control, even though the testing itself may become a substantial part of the cost per unit. It will be from this testing that the Department will be able to establish standards and expectations for the effective period of lead-safe conditions before the potential recurrence of any active lead hazard.

(2) *Required Thresholds for Hazard control.* While the Department's Interim Guidelines (see Appendix A) employ two hazard-control thresholds, one milligram per square centimeter (1.0 mg/cm^2) or 0.5 percent by weight, applicants may utilize other thresholds, provided that the alternative threshold is justified adequately and is accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants, and must discuss cost savings and benefits expected to result from using the proposed approach.

(3) *Surfaces to be abated.* HUD's Interim Guidelines are under revision, but currently require the abatement of all interior and exterior painted or varnished surfaces having a lead content above the permitted threshold. In accordance with the new guidance from Title X, there are now six defined hazards: lead-contaminated dust, lead-contaminated soil, lead-based paint that is deteriorated, lead-based paint present in accessible surfaces that can be chewed or mouthed by children, lead-based paint present in friction surfaces, and lead-based paint present in impact surfaces. The applicant may choose to treat fewer surfaces or apply any other partial-abatement or hazard- control techniques, provided that an adequate rationale, including periodic monitoring, is presented to and accepted by HUD. The rationale must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants and at the same time, provide cost savings or other benefits, and therefore would support the new Title X concept.

(4) *Clean-up.* The applicant may employ post-abatement clean-up procedures that differ from the procedures in the HUD Interim Guidelines, provided that an adequate justification is established and accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants, and must discuss cost savings and benefits expected to result from using the proposed approach.

(5) Grantees shall be required to meet the post-abatement wipe-test clearance thresholds contained in the HUD Interim Guidelines (see Appendix A). Wipe tests shall be conducted by a certified inspector who is independent of the abatement contractor. Dust-wipe samples must be analyzed by an accredited laboratory. Units shall not be reoccupied until acceptable clearance levels are achieved.

Section 4. Grant Application Process

4.1 Submitting Applications for Grants

To be considered for funding an original and two copies of the application must be physically received in the Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP), Department of Housing and Urban Development, room B–133, 451 Seventh Street, SW., Washington, DC 20410, no later than 3 p.m. (Eastern Time) on July 5, 1994. Electronic (FAX or equivalent transmittal) application is *not* an acceptable transmittal mode.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this factor into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, equipment breakdown, or delivery-related problems.

HUD will review each application to determine whether it meets all of the threshold criteria established under Section 4.2 of this NOFA. Nonresponsive applications will be declared ineligible for further consideration. Applications that meet all of the threshold criteria will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors in Section 4.3 of this NOFA.

HUD intends to fund the highest ranked applications within the limits of funding availability, but reserves the right to advance other eligible applicants in funding rank, if necessary, to assure geographic diversity, to promote the purposes of Title X, broaden the range of hazard-control alternatives to be tested, or enhance data reliability.

4.2 Threshold Requirements for Category I Grants

(a) *Purpose.* The application must be for funds to evaluate and reduce lead hazards in priority housing (see Appendix D for program-by-program listing of eligible HUD-associated housing programs).

(b) *Eligible Applicants.* An applicant must be a State or unit of local government that has an approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 of the NAHA (42 U.S.C. 12705) that includes a lead-hazard control element. Current CHAS regulations were published in the **Federal Register** on September 1, 1992, at 57 FR 40038, as amended, in part, on March 12, 1993 at 58 FR 13686. Applicants under this NOFA are permitted to use an abbreviated housing strategy, as set forth in § 91.25 of the CHAS regulations). (See Appendix F for guidance on submitting an abbreviated CHAS.)

(c) *Matching Contribution.* Each applicant shall provide a matching contribution of at least 10 percent of the requested grant sum. This may be in the form of a cash or in-kind contribution.

(d) *Contractor certification program requirement.* Each applicant must carry out its hazard control program under an operational State-accredited or Federal certification/training program that is at least as protective as the Federal Certification Program standards outlined in Appendix E. The standard completion time for non-conditional grantees is 24 months. The following additional provisions apply to this requirement:

(1) To receive a grant an applicant must use contractors certified and workers trained within a State that currently has a lead-based paint certification/training program acceptable to HUD and the EPA. If the State in which the applicant is located has such a program, the applicant should furnish copies of the enabling statutes and regulations, as well as other appropriate documentation (e.g., certificates and licenses), as proof of the program.

(2) Other applicants may be approved for a conditional grant with funding subject to the following provisions:

(A) An applicant shall furnish at the time of application, letters of intent to establish and implement a certification program. The enabling legislation shall be enacted within 12 months of the Category I application deadline date, and the designated agency implementing the program shall have completed initial training sessions within 18 months from the deadline date of the Category I application date. Letters of intent shall be from the Governor of the State and an authorized representative of the legislative body in the State. The letters shall set forth their plans to make a good faith effort to enact, within 12 months of the Category I application deadline date, enabling legislation that would establish or designate an appropriate department or office; to put an operating staff in place; and to promulgate appropriate regulations and complete the initial training sessions within 18 months of the Category I application date. These letters of intent shall be carried over to the grant agreement and become part of the grantee's assurances under it. The maximum completion time for conditional grants is 36 months.

(B) There may be local government applicants in States that have furnished letters of intent and have made a good faith effort to carry out that intent, but whose State governments have been unable to comply with the 12-month or 18-month time table. These local governments may, with HUD approval, choose to use workers and contractors certified or licensed under accredited programs of other States. The maximum completion time for such conditional, local-government grantees is 42 months; the extra 6 months is made available to arrange for out-of-State certified performers.

(C) Except as provided in paragraph (d)(2)(B) of this section, if the commitment to establish a certification/training program is not fulfilled within the stated time, the conditional grant agreement shall immediately terminate.

(e) *Continued Availability of Hazard Reduced Housing to Lower Income Families.* Units in which lead hazards have been treated under this program shall then be occupied by and continue to be available to low- and moderate-income residents as defined under section 215 of the NAHA.

(f) *Cooperation With Related Research and Evaluation.* Applicants shall cooperate fully with any research or evaluation sponsored by HUD and associated with this grant program, including preservation of the data and records of the project and compiling requested information in formats provided by the researchers or evaluators. This cooperation may also include the compiling of certain relevant local demographic, dwelling unit, and participant data not contemplated in applicant's original proposal. Participant data shall be subject to Privacy Act protections. For estimating purposes, an applicant shall devote three percent of the total grant sum for data collection and evaluation purposes, as discussed in the Section 3.4, Eligibility, of this NOFA.

4.3 Rating Factors

HUD will use the following technical and financial criteria, subject to the qualification discussed in the second paragraph of this section, to rate and rank applications received in response to this NOFA. The technical quality of an application will be rated, and then the strength, quality, and completeness of the financial and resources plan will be used to assess how well the technical plan is likely to be carried out using the available resources. The total number possible for the rating factors is 120 points, including potential bonus points, if awarded.

Applicants are advised, however, that in selecting grantees under this NOFA, the Secretary is unlikely to select applicants who were previously funded under the FY 1993 NOFA, issued June 4, 1993 (57 FR 31848). This selection prerogative will be exercised under the Secretary's authority to ensure that available funds are used effectively and to promote the purposes of Title X. See, section 1011(d)(5) of Title X (42 U.S.C. 4852(d)(5)).

(a) *Strategy. (50 points)*—The quality and cost effectiveness of the proposed lead-based paint hazard control strategy. The strategy should include:

(1) The hazard-control program, including selection of subgrantees and other subrecipients, abatement/hazard control methods and levels of treatment, the quality of prior abatement experience, especially for recipients of previous hazard control grants, financing mechanisms, community education, temporary relocation, and the degree to which the strategy focuses on households in priority housing with children under the age of 6 years (20 points);

(2) A management and budget plan for the whole grant and for each major component funded directly from the grant. The plan shall include a year-by-year spreadsheet budget for the total grant, a task-by-task spreadsheet budget for the total grant, and an overall source and use of funds diagram. (See Appendix C for a sample; no form is provided because programs vary too widely.) The source and use diagram amounts for grant use must agree with spreadsheet totals. Provide a year-by-year spreadsheet for each major subtask shown on the diagram. The plan shall include an organization chart and a narrative describing how the parts of the grant program will be coordinated and managed. Provide a brief narrative for each major budget subtask and each functional cost element, explaining its planned use. (10 points);

(3) The identification, inspection, and testing of priority housing to be treated. Housing recently inspected (within 12 months of grant) and identified prior to the date of the grant as having lead-based paint may be included (8 points); and

(4) A program for education and outreach to the community on the hazards of lead-based paint, including blood screening of young children and, if necessary, referral for medical treatment (12 points).

(b) *Applicant Capacity and Commitment to Hazard control. (40 points)*—The capacity of the applicant to initiate and carry out the lead-based paint testing and hazard-control program successfully within the time frames set forth in this NOFA. Show that the proposed staff skills match the proposed program of work described. Elements to be considered include:

(1) Demonstrated knowledge and experience of the proposed project manager in planning and managing large and complex interdisciplinary programs involving housing rehabilitation, public health, and environmental management. The percentage of time of the project manager to be devoted to this project is a significant factor, and must be disclosed in the application. (15 points);

(2) Demonstrated knowledge and experience of the staff assigned to this project in carrying out these undertakings, including the percentage of time each person will devote to the project (15 points); and

(3) Institutional capacity, demonstrated by the experience and continuing capacity of the jurisdiction to initiate and implement similar environmental and housing projects. Applicant should describe previous related efforts and the current capacity of its agencies (10 points).

(c) *Applicant's Matching Contribution and Other Resources (10 points)*—At a minimum, the applicant shall provide a matching contribution of at least 10 percent of the requested grant sum. That contribution may be in cash or in kind. In-kind contributions shall be given a monetary value. Community Development Block Grant funds may be considered part of the matching contribution, but only when they are specifically dedicated to an integral part of the project. This rating factor provides points only for additional resources that exceed the minimum required 10% match. Each source of contributions, both for the required minimum and additional amounts, shall be made in a letter of commitment from the funding entity, whether a public or private source, and shall describe the contributed resources that will be used in the program. Absence of required letters offering specific details will result in a reduced rating under this factor.

(d) *Community and Private Sector Participation (10 points)*—The extent to which the applicant has enlisted the broad participation of neighborhood, community, and nongovernmental organizations; the private sector; and other governmental units in the hazard control program through specific commitments of time, effort, and resources. These commitments include consultation, marketing, fund-raising, and other economic lift activities, such as employment of lower-income neighborhood residents in the hazard control work. Evidence of these commitments should include names and proposed roles of these participants, and plans for employment of lower-income residents. Absence of employment commitments and letters of participation will result in a reduced rating under this factor.

4.4 Bonus Points

(a) Five bonus points (5 points) will be awarded if the applicant is either: a State in which there has been no award of a lead hazard control grant in previous rounds, or a local government in a State in which there has been no previous award. These extra points are to encourage the broadest diversity of States and local governments to develop lead hazard control programs.

(b) The following five bonus points also may be awarded to applicants that propose credible and sustainable mechanisms to meet any of the following needs: (5 points)

(1) The establishment of stable, long-term public or private sources of funds for State/local testing and hazard control (see Section 3.4(c)(2)(ii) of this NOFA). (2 points);

(2) Land records tracking system. Applicants are encouraged to establish in their land records files a mechanism for recording and tracking in some detail the nature and location of prior lead-based paint hazard control activities by specific housing units (see Section 3.4(c)(2)(iii) of this NOFA). (2 points); and

(3) The establishment of a State-level data collection mechanism to track all lead-based paint testing and hazard-control activities in the State (see Section 3.4(c)(2)(i) of this NOFA). (1 point).

Section 5. Checklist of Application Submission Requirements

5.1 Applicant Data

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

(a) The name, mailing address, telephone number, and principal contact person of the applicant. If the applicant has consortium associates, partners, major subcontractors, or joint venture participants contributing resources to the project, similar information shall also be provided for each of them.

(b) Proof of State accreditation requirements for lead-based paint certification/training programs applicable to the contractors, inspectors, and workers that will be used by the applicant, or letters of intent from both the Governor and an authorized representative of the legislative body stating that a good faith effort will be made to have a certification/training program authorized within 12 months, and operational within 18 months, of the Grant application deadline date (see section 4.2(g) of this NOFA regarding this requirement).

(c) Evidence of the applicant's commitment to eliminating or reducing significant lead-based paint hazards in housing as detailed in the applicant's strategy for lead-based paint hazard control (see the first rating factor, Strategy, in Section 4.3 of this NOFA).

(d) A detailed description of the funding mechanism, selection process, and other proposed activities that the applicant plans to use to assist the direct performers of hazard control activities under this grant.

(e) The management and task budget plan that includes a summary diagram (see Appendix C) showing the source and use of all grant funds. The plan shall detail the proposed costs and schedules for starting and completing each task or major subset of project activities. The budget shall provide for each task and major subtask that is funded by the grant. All major tasks and subtasks, including data collection (allow 3% of the total grant sum requested), should be estimated (even though not precisely known). There shall be a separate estimate for the overall grant management element, "Administrative Costs," which are more fully defined in Appendix B. The budget shall include not more than 10 percent for administrative costs and not less than 90 percent for direct project elements (including data collection; see paragraph (e), Eligible Activities, in Section 3.4 of this NOFA). Estimates are not required for activities fully funded by local matching funds, but those funding sources should be shown as lump-sum amounts in the Source and Use diagram (see Appendix C).

(f) Evidence of a continuing capacity of the applicant to undertake a lead-based paint testing and abatement program safely and effectively.

(g) Information itemizing what constitutes the applicant's matching contribution, including values placed on donated in-kind services; letters or other evidence of commitment from donors; and the amounts and sources of coordinated resources.

(h) Information on the names and proposed roles of local participating community- or neighborhood-based groups or organizations, including local businesses.

(i) Completed Forms HUD–2880, Applicant/Recipient Disclosure/Update Report, and SF–LLL, Disclosure of Lobbying Activities, where applicable (see section on Other Matters in this NOFA).

(j) Standard Forms SF–424 and 424–B, and other certifications and assurances listed in section 5.3 of this NOFA.

(k) A copy of the applicant's lead-hazard control element for its Comprehensive Housing Affordability Strategy (CHAS).

5.2 Proposed Activities

(a) *Affected population to be served.* The applicant shall describe the size and general characteristics of the target housing within its jurisdiction,

including a description of the housing's location, condition, and occupants, and a current estimate of the number of children under the age of six in these units. Maps should be included. First preference shall be given to priority housing units. Vacant housing that subsequently will be occupied by low-income renters should also be included in this description. In addition, as a measure of its ongoing commitment to lead-based paint programs, the applicant shall provide information on the number of children diagnosed as being lead poisoned within the previous five years and the remedial measures that were taken to respond to these diagnoses.

(b) *Discussion of lead-based paint activities.* The applicant shall provide a reasoned discussion of the proposed hazard control activities, including, but not limited to, information on the following:

- Overall hazard control strategy, including priority setting;
- Specific neighborhoods, census tracts or other locators of the housing units targeted for abatement (area and local maps shall be included);
- Inspection and testing of all lead-based paint-hazard housing to be treated as part of this project;
- Blood testing of children under the age of six, and medical referral for children found to have elevated blood-lead levels;
- Hazard-control methods, including interim controls, in-place-management, less than full abatement and full abatement. Include lead-based paint hazard controls in housing undergoing renovation funded by other sources, but included as part of this project;
- Community education;
- Relocation;
- Coordination and integration with public health and housing programs to effect lead-based paint hazard control;
- Data collection, documentation, and evaluation;
- Mechanisms that the applicant proposes to employ to provide financial assistance to low- and moderate-income owners and low-income renters under this grant program for abatement. The applicant may provide the services through a variety of programs, including grants, equity, loans, investment or seed money for non-profit performers' revolving loan funds, loan funds, loan guarantees, interest write-downs, or other forms of assistance that may be approved by the Department. Program income from loan repayments may be used only for hazard-control related activities; and
- Management and staffing of the project, including the extent of time commitments and areas of specialization and expertise.

(c) *Identification of significant-hazard housing.* The applicant must demonstrate a commitment to focus its efforts on the identification of housing units with significant lead-based paint hazards, particularly among dwellings for lower income families, so as to concentrate its resources on the greatest needs first.

(d) *Safe and effective conduct of the abatement.* The applicant must demonstrate willingness and readiness to oversee the safe and effective conduct of the hazard-control work, as provided in the application kit.

5.3 Certifications and Assurances

The following certifications and assurances apply to all applications.

(a) The application shall contain an assurance that the applicant will comply with the environmental laws and authorities at 24 CFR 50.4, and that it will:

(1) Supply information necessary for HUD to perform any required environmental review of each property;

(2) Carry out mitigating measures required by HUD or select alternate eligible property; and

(3) Not commit HUD or local funds to, or carry out, any program activities for any property until HUD approval is received.

(b) The application shall contain a certification that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; implementing regulations at 49 CFR part 24; and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

(c) The application shall be in compliance with Federal civil rights laws and requirements.

(d) The application shall contain assurances that the applicant will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19); Executive Order 11063; Title VI of the Civil Rights Act of 1964, pertaining to equal opportunity and nondiscrimination in housing; and all regulations issued in accordance with these authorities.

(e) The application shall include assurances of nondiscrimination on the basis of age or handicap, in compliance with the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and all regulations issued pursuant to these authorities.

(f) The application shall contain a certification that the applicant will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, pertaining to the provision of economic opportunities for low- and very low- income persons, and implementing regulations at 24 CFR part 135.

(g) The applicant shall certify that its financial management system meets the standards for fund control and accountability as prescribed by 24 CFR 85.20.

(h) The applicant shall assure that it will conduct dust-wipe testing in all units in which lead-hazard control occurs, both prior to and immediately after the hazard-control treatment and clean up, and that the applicant will conduct dust-wipe testing 12-months after abatement.

(i) The applicant shall assure that it will test and record the blood-lead level of all children under the age of six occupying affected units prior to abatement. Children determined to have elevated blood-lead levels, using CDC, October 1991 Guidelines (see Appendix A to this NOFA), shall be provided appropriate medical treatment, as set forth by the CDC. If there is an existing, funded program, the costs of blood testing and medical follow-up are eligible for inclusion in the computation of the other resources contribution.

(j) The applicant shall assure that this application represents an expansion of the delivery of testing and abatement services and does not replace existing resources dedicated to any ongoing project.

(k) The application shall contain any other assurances that HUD has included in the application kit under this NOFA.

Section 6. Corrections to Deficient Applications

HUD will notify an applicant, in writing, shortly after the expiration of the NOFA response deadline, of any minor deficiencies in the application that are not of a substantive nature, such as an omitted certification or illegible signature. The applicant shall submit corrections, which must be received at the Office of Lead-Based Paint Abatement and Poisoning Prevention within 21 calendar days from the date of HUD's letter notifying the applicant of any minor deficiencies. Electronic (FAX) transmittal is not an acceptable transmittal mode. Corrections to minor deficiencies will be accepted within the 21-day time limit. Applicants that do not make timely response to requests for deficiency corrections shall be removed from further consideration for an award.

Applicants shall only be permitted to correct those deficiencies determined by HUD to be minor. Deficiencies determined by HUD to be substantive may not be corrected.

Section 7. Administrative Provisions

7.1 Obligation of Funds

(a) *Provision of funds.* Funding shall be provided on a cost-reimbursable basis not to exceed the amount of the grant, except as otherwise provided in Sections 7.2 and 7.3 of this NOFA. There shall be set aside from the final grant payment sufficient funds to pay for the 6-month and 12-month post-abatement testing for blood-lead levels and dust-wipe levels in the dwelling, as provided in paragraph (c) of this section.

(b) *Advance funds.* After a grant agreement has been executed with a grantee that has an acceptable, existing State certification program (in compliance with Appendix E requirements), HUD may, upon written request, provide to the grantee a cash advance that shall not exceed 10 percent of the grant amount and shall be limited to the minimum amount needed for the actual, immediate cash requirements of the grantee in carrying out the purposes of this NOFA. Similarly, those grantees whose awards are conditioned upon proof of newly executed executive or legislative authority to carry out the requirements of this NOFA may request advances of funds, not to exceed five percent (5%) of the total grant amount, for purposes of implementing certification or licensing requirements and preparing certain planning documents for HUD review and approval. Advance funds may be divided between administrative costs and direct project costs. The applicant shall provide justification for the division, and HUD may accept or modify the applicant's proposed division.

(c) *Availability of remaining funds.* HUD will not make additional payments, beyond the advance funds described in paragraph (b) of this section, from the amount awarded to a grantee until the grantee's proposed contractors and workers have met the certification and training requirements of a State-accredited program. All additional payments will be made on a cost-reimbursable basis, except that a 10 percent final payment shall be made upon completion of all tasks and delivery of an acceptable final report, subject to the set aside for post-testing described in paragraph (a) of this section. The grantee shall specify in its request for final payment the amount of funds to be set aside from the final 10 percent for the 6- and 12-month post-abatement dust-wipe and blood tests. When results of these tests are forwarded to HUD, the testing set-aside funds will be released by HUD to the grantee.

7.2 Increases of Awards

After the signing of the grant agreement and initial obligation of funds, HUD will not increase the grant sum or the total amount to be obligated based upon the original scope of work. Amounts awarded may only be increased as provided in section 7.3, Deobligation, of this NOFA.

7.3 Deobligation

(a) *Reasons for deobligation.* HUD may deobligate amounts for the advance or grant if proposed activities are not initiated or completed within the required time after selection. The grant agreement will set forth in detail other circumstances under which funds may be deobligated and other sanctions imposed.

(b) *Treatment of deobligated funds.* HUD may undertake any one, or a combination, of the following actions, with respect to deobligated funds:

(1) Readvertise the availability of funds that have been deobligated under this section in a new NOFA;

(2) Reconsider applications that were submitted in response to the most recently published NOFA, and select additional applications for funding with deobligated funds. These selections will be made in accordance with the selection process described in the applicable NOFA;

(3) Fund supplemental applications from existing grantees for the performance of expanded scopes of work that may be of benefit to the overall program; and

(4) For deobligated funds that total less than a minimum grant amount ($1 million), issue a solicitation to provide technical assistance or other program support services.

7.4 Reports

The grantee shall submit the following types of reports:

(a) *Annual reports.* The grantee shall submit to HUD a report for any fiscal year in which the grantee expends grant funds. Each report shall be due six weeks after the end of the Federal Fiscal Year (September 30). The report shall:

(1) Describe the use of the amounts received;

(2) State the number of risk assessments and the number of inspections conducted in residential dwellings;

(3) State the number of residential dwellings in which lead-based paint hazards have been abated, organized by method of abatement used;

(4) State the number of residential dwellings in which lead-based paint hazards have been reduced through interim controls; and

(5) Provide any other information that the Secretary determines to be appropriate.

(b) *Progress Reports.* The grantee shall submit regular progress reports in accordance with HUD's Management Reporting System. These progress reports shall consist of graphic reports showing expenditures and technical progress to date, compared with the original plan, and a narrative describing important events and problems encountered during the period. The progress reports:

(1) Shall be filed quarterly during the planning period (and during the waiting period for the establishment of a State Certification Program);

(2) Shall be filed monthly during the active abatement-work period; and

(3) May revert to being filed quarterly after completion of active abatement work.

(c) *Final Report/Case Study.* The grantee shall submit a final report/case study in accordance with the procedures of HUD's Management Reporting System. The report shall summarize the applicant's plans, execution of the plans, and lessons learned. The report need not be lengthy, but should be of a quality and detail to provide a free-standing description to any outside reader of all of the applicant's work and achievements under the grant.

Section 8. Other Matters

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., room 10276, Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official under section 8(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various

levels of government. Under this NOFA, grants will be made for the abatement of significant lead-based paint and lead-dust hazards in low- and moderate-income owner-occupied units and privately owned low-income rental units. Although the Department encourages States and local governments to initiate or expand lead-based paint certification, testing, abatement, and financing programs, any action by a State or local government in these areas is voluntary. Because action is not mandatory, the NOFA does not impinge upon the relationships between the Federal government and State and local governments, and the notice is not subject to review under the Order.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this document will likely have a beneficial impact on family formation, maintenance and general well-being. This NOFA, insofar as it funds repairs to privately owned housing, will assist in preserving decent housing stock for resident families. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Section 102 of the HUD Reform Act—Documentation and Public Access Requirements—Applicant/Recipient Disclosures

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Procurement Standards

All grantees are governed by and should consult 24 CFR parts 85.36 and 85.37, which detail procedures for subcontracts and subgrants by States and local governments. Under § 85.36, which pertains to subcontracts, small purchase procedures can be used for contracts up to $25,000, and require price or rate quotations from several sources (three is acceptable); above that threshold, more formal procedures are required (note that § 85.36 treats States differently than local governments). Section 85.37 procedures apply to subgrants, and are not as restrictive. If States have more restrictive standards for contracts and grants, the State standards can be applied. All grantees should consult and become familiar with §§ 85.36 and 85.37 before issuing subcontracts or subgrants.

Davis-Bacon Act

The Davis-Bacon Act does not apply to this program. However, if grant funds are used in conjunction with other Federal programs in which the provisions of Davis-Bacon apply, then Davis-Bacon provisions would apply to the extent required under the other Federal programs.

Prohibition Against Lobbying of HUD Personnel

Section 112 of the Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235, approved December 15, 1989) (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department, and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by regulations codified in part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of part 86.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410. Telephone: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing Section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of Section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD)

concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.)

The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

Authority: 42 U.S.C. 4821–4846; 42 U.S.C. 3535(d).

Dated: April 14, 1994.

Arthur S. Newburg,

Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

Appendix A—Relevant Federal Regulations and Guidelines

To secure any of the documents listed, call the listed telephone number (generally not toll-free).

Regulations

1. Worker Protection: OSHA regulations (phone (202) 755–1822):
   —General Industry Lead Standard, 29 CFR 1910.1025;
   —Lead Exposure in Construction, 29 CFR 1926.62, and appendices A, B, C, and D; published 58 FR 26590 (May 4, 1993).
2. Waste Disposal: 40 CFR parts 260–268 (EPA regulations); phone 1–800–424–9346.

Guidelines

1. Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; HUD, revised May, 1991 (available for a charge; phone 800–245–2691):

Post Abatement Clearance, No More Than

200 Micrograms/Sq. Ft. (Floors)
500 Micrograms/Sq. Ft. (Window Sills)
800 Micrograms/Sq. Ft. (Window Wells)

2. HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition; phone (202) 708–0336.
3. Preventing Lead Poisoning in Young Children; Centers for Disease Control, October 1991 (phone (404) 488–4880.

Reports

1. Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: Report to Congress (HUD, December 7, 1990) (available for a charge; phone 800–245–2691).

Information on Content of State-Accredited Contractor Certification and Worker Training Programs

Contact: EPA Office of Pollution Prevention and Toxics, Division of Environmental Assistance; phone (202) 260–3790.

CDC Classes of Blood Lead Levels in Children

Class	Concentration (µg/dL)	Comment
I	<9	Child is not considered to be lead-poisoned.
IIA	10–14	Large number or proportion of children with blood lead levels in this range should trigger community-wide childhood lead poisoning prevention activities. Children in this range may need to be rescreened more frequently.
IIB	15–19	Child should receive nutritional and educational interventions and more frequent screening. If the blood lead level persists, environmental investigation and intervention should be done.
III	20–44	Child should receive environmental evaluation and remediation and a medical evaluation; may need pharmacologic treatment of lead poisoning.
IV	45–69	Child will need both medical and environmental interventions, including chelation therapy.
V	>70	Child is a medical emergency. Medical and environmental management must begin immediately.

Appendix B—"Administrative Costs"

I. Purpose

The intent of this HUD grant program is to allow the Grantee to be reimbursed for the reasonable direct and indirect costs, subject to a top limit, for overall management of the grant. In most circumstances the Grantee, whether a state or a local government, is expected to serve principally as a conduit to pass funding to subgrantees, which are to be responsible for performance of the lead-hazard reduction work. Congress set a top limit of ten (10) percent of the total grant sum for the Grantee to perform the function of overall management of the grant program, including passing on funding to subgrantees. The cost of that function, for the purpose of this grant, is defined as the "administrative cost" of the grant, and is limited to ten (10) percent of the total grant amount. The balance of ninety (90) percent or more of the total grant sum is reserved for the subgrantee/direct-performers of the lead-hazard reduction work.

II. Administrative Costs: What They Are Not

For the purposes of this HUD grant program for States and local governments to provide support for the evaluation and reduction of lead-hazards in low and moderate-income, private target housing: the term "administrative costs" should not be confused with the terms "general and administrative cost", "indirect costs", "overhead", and "burden rate". These are accounting terms, usually represented by a government-accepted standard percentage rate. The percentage rate allocates a fair share of an organization's costs that cannot be attributed to a particular project or department (such as the chief executive's salary or the costs of the organization's headquarters building) to all projects and operating departments (such as the Fire Department; the Police Department; the Community Development Department, the Health Department or this program). Such allocated costs are added to those projects' or departments' direct costs to determine their total costs to the organization.

III. Administrative Costs: What They Are

For the purposes of this HUD grant program, "Administrative Costs" are the Grantee's allowable direct costs for the overall management of the grant program plus the allocable indirect costs. The allowable limit of such costs that can be reimbursed under this program is ten (10) percent of the total grant sum. Should the Grantee's actual costs for overall management of the grant program exceed ten (10) percent of the total grant sum, those excess costs shall be paid for by the Grantee. However, excess costs paid for by the Grantee may be shown as part of the requirement for cost-sharing funds to support the grant.

IV. Administrative Costs: Definition

A. General

Administrative costs, are the allowable, reasonable, and allocable direct and indirect costs related to the overall management of the HUD grant for lead-hazard reduction activities. Those costs shall be segregated in a separate cost center within the Grantee's accounting system, and they are eligible costs for reimbursement as part of the grant, subject to the ten (10) percent limit. Such administrative costs do not include any of the staff and overhead costs directly arising from specific subgrantee program activities eligible under FY 1992 NOFA Section II.e.(5) (a) and (b) (ii) through (vi), because those costs are eligible for reimbursement under a separate cost center as a direct part of project activities.

The Grantee may elect to serve solely as a conduit to subgrantees, who will in turn perform the direct program activities eligible under NOFA Section II.E.(5) (a) and (b) (ii) through (vi), or the grantee may elect to perform all or a part of the direct program activities in other parts of its own organization, which shall have their own segregated cost centers for those direct program activities. In either case, not more than 10 percent of the total HUD grant sum

may be devoted to administrative costs, and not less than 90% of the total grant sum shall be devoted to direct program activities. Grantee shall take care not to mix or attribute administrative costs to the direct project cost centers.

B. Specific

Reasonable costs for the Grantee's overall grant management, coordination, monitoring, and evaluation are eligible administrative costs. Subject to the (10) percent limit, such costs include, but are not limited to, necessary expenditures for the following, goods, activities and services:

(1) Salaries, wages, and related costs of the Grantee's staff, the staff of affiliated public agencies, or other staff engaged in Grantee's overall grant management activities. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program for each person *whose primary responsibilities* (more than 65% of their time) with regard to the grant program involve direct overall grant management assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any overall grant management assignments.* The Grantee may use only one of these two methods during this program. Overall grant management includes the following types of activities:

(a) Preparing grantee program budgets and schedules, and amendments thereto;

(b) Developing systems for the selection and award of funding to subgrantees and other subrecipients;

(c) Developing suitable agreements for use with subgrantees and other subrecipients to carry out grant activities;

(d) Developing systems for assuring compliance with program requirements;

(e) Monitoring subgrantee and subrecipient activities for progress and compliance with program requirements;

(f) Preparing presentations, reports, and other documents related to the program for submission to HUD;

(g) Evaluating program results against stated objectives; and

(h) Providing local officials and citizens with information about the overall grant program. (However, a more general education program, helping the public understand the nature of lead hazards, lead hazard reduction, blood-lead screening, and the health consequences of lead poisoning is a direct project support activity, under NOFA Section II.E. (5) (b), and should not be attributed to administrative costs, but to its own cost center.)

(i) Coordinating the resolution of overall grant audit and monitoring findings;

(j) Managing or supervising persons whose responsibilities with regard to the program include such assignments as those described in paragraphs (a) through (i).

(2) Travel costs incurred for official business in carrying out the overall grant management;

(3) Administrative services performed under third party contracts or agreements, for services directly allocable to overall grant management such as overall-grant legal services, overall-grant accounting services, and overall-grant audit services;

(4) Other costs for goods and services required for and directly related to the overall management of the grant program, including such goods and services as telephone, postage, rental of equipment, renter's insurance for the program management space, utilities, office supplies, and rental and maintenance (but not purchase) of office space for the program.

(5) The fair and allocable share of Grantee's general costs that are not directly attributable to specific projects or operating departments such as: The Mayor's and City Council's salaries and related costs; the costs of the City's General Counsel's office, not charged off to particular projects or operating departments; and the costs of the City's Accounting Department not charged back to specific projects or operating departments. (If Grantee has an established burden rate it should be used; if not Grantee shall be assigned a negotiated provisional burden rate, subject to final audit.)

To repeat, all of the above activities goods and services: 1.a–j., 2., 3., 4., and 5. are subject to the ten (10) percent limit.

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APPENDIX C

HUD GRANT PROGRAM FOR LEAD-HAZARD REDUCTION
Sample Diagram: SOURCE AND USE OF FUNDS
$4,000,000 GRANT TO ANYTOWN, USA

SOURCE OF FUNDS				USE OF FUNDS			
SOURCE	AMOUNT	SUB SOURCE	AMOUNT	USER	USED FOR		AMOUNT USED
FEDERAL GRANT	$4,000,000	ADMINISTRATIVE COSTS (MAX. 10%)	NOT TO EXCEED $400,000	ANYTOWN, USA GRANT MANAGEMENT TASK FORCE	OVERALL GRANT MANAGEMENT	SALARIES, FRINGE BEN. OTHER DIRECT COSTS, INDIRECT COSTS	NOT TO EXCEED $400,000
		DIRECT PROJECT COSTS (MIN. 90%)	NOT LESS THAN $3,600.000	SOUTHSIDE INC., LEAD-HAZARD PREVENTION GRANT PROGRAM	GRANTS TO LOW-INCOME HOMEOWNERS FOR LEAD-HAZARD REDUCTION PROJECTS	GRANT MANAGEMENT STAFF EXPENSES GRANT OUTLAYS	$800,000
				APARTMENT MANAGERS ASSOCIATION - - LEAD-HAZARD REDUCTION REVOLVING LOAN PROGRAM	3% LOANS TO LOW-INCOME APARTMENT LANDLORDS FOR LEAD-HAZARD REDUCTION PROJECTS	LOAN MANAGEMENT STAFF EXPENSES PRINCIPAL FOR LOANS	$1,000,000
				ROW-HOUSE, LOW-INCOME HOUSING IMPROVEMENT GROUP, INC.	LEAD-REDUCTION SEGMENTS OF WORK ONLY- PROJECT TO BUY AND FIX UP ROW HOUSING FOR LOW-INCOME RENT	PROJECT MANAGEMENT STAFF, A&E CONTR., DETECT.CONTRACTOR, GENERAL CONTRACTOR	$930,000
				ANYTOWN, USA COMMUNITY DEVELOPMENT DEPARTMENT	REMOVE LEAD HAZARDS FROM SHELTER #3 FOR HOMELESS FAMILIES WITH CHILDREN (PART OF A SCHOOL CONVERSION PROJECT)	LEAD-PAINT SHARE OF PROJECT INLCUDING PROJECT MANAGEMENT	$750,000
				TO BE SELECTED	DATA COLLECTION, ANALYSIS CASE STUDY OF GRANT WORK	ANYTOWN SALARY OR CONTRACTOR	UP TO $120,000

MATCHING CONTRIBUTION	$1,250,000	C-A ANYTOWN COUNCIL APPROPRIATION	$ 50,000	ANYSTATE, USA	LOCAL CONTRIBUTION TO ITS CERTIFICATION PROGRAM	CASH PAYMENT	$ 50,000
		B ANYTOWN COUNCIL APPROPRIATION	$150,000	COMMUNITY DEVELOPMENT DEPARTMENT SHELTER #3 PROJECT	SHELTER #3 NON-LEAD REPAIRS	SUBCONTRACT PAYMENTS	$150,000
		H ANYTOWN CDBG ALLOCATION	$100,000	COMMUNITY DEVELOPMENT DEPARTMENT SHELTER #3 PROJECT	SHELTER #3 WINDOW REPLACEMENT COST	PAYMENT TO WINDOW MANUFACTURER	$100,000
		I ANYTOWN PUBLIC AFFAIRS DEPARTMENT	$200,000	ANYTOWN PUBLIC AFFAIRS DEPARTMENT	LEAD-HAZARDS PUBLIC EDUCATION PROGRAM	DEPARTMENT SALARIES	$200,000
		M ANYTOWN MEDIA COMP.	$ 50,000	ANYTOWN PUBLIC AFFAIRS DEPARTMENT	FREE RADIO, TV SPOTS FOR PUBLIC EDUCATION PROGRAM	FREE AIR TIME	$ 50,000
		K ANYTOWN PUBLIC HEALTH DEPARTMENT	$250,000	ANYTOWN PUBLIC HEALTH DEPARTMENT	BLOOD-LEAD SCREENING PROGRAM CHILDREN UNDER 6	DEPARTMENT SALARIES	$250,000
		N ANYTOWN MEDICAL FOUNDATION	$200,000	ANYTOWN PUBLIC HEALTH DEPARTMENT	CHELLATION TREATMENT PROGRAM CHILDREN UNDER 6	MEDICAL CARE AND SERVICE	$200,000
		D ANYTOWN COMMUNITY DEVELOPMENT DEPARTMENT	$100,000	ANYTOWN COMMUNITY DEVELOPMENT DEPARTMENT	SHELTER #3 A&E SERVICES	STAFF SALARIES	$100,000
		ANYTOWN BUILDING INSPECTION DEPARTMENT	$ 50,000	ANYSTATE USA	TRAIN ANYTOWN BUILDING INSPECTORS	DEPARTMENT TRAVEL AND SALARIES	$ 50,000
		ANYTOWN BUILDING INSPECTION DEPARTMENT	$100,000	ANYSTATE USA BUILDING INSPECTION DEPARTMENT	1. LEAD-HAZARD DETECTION SERVICES 2. LEAD-HAZARD REMOVAL INSPECTIONS	DEPARTMENT SALARIES	$100,000
TOTALS:	$5,250,000		$5,250,000			TOTAL:	$5,250,000

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NOFA III

ELIGIBILITY OF HUD-ASSOCIATED "PRIORITY" HOUSING UNITS TO PARTICIPATE UNDER HUD'S LEAD-HAZARD-CONTROL GRANTS PROGRAM

APPENDIX D

Program	Eligibility		Program	Eligibility	
	Yes	No		Yes	No
Housing Components of Community Planning & Development Programs					
Community Development Block Grants (Entitlement)	X		Single Family Home Mortgage Coinsurance (Section 244)	X	
Community Development Block Grants (Non-Entitlement) for States and Small Cities	X		Graduated Payment Mortgages (Section 245)	X	
Community Development Block Grants (Section 108 Loan Guarantee)	X		Adjustable Rate Mortgages (ARMs)(Section 251)	X	
Special Purpose Grants	X		Manufactured Homes (Title I)	X	
The Home Program: HOME Investment Partnerships	X				
HOPE for Homeownership of Single Family Homes	X		**Housing Multifamily Programs**		
Shelter Plus Care (by component)			Rent Supplements (Section 101)		X
Sponsor-based Rental Assistance		X	Multifamily Rental Housing (Section 207)	X	
Tenant-based Rental assistance	X		Cooperative Housing (Section 213)	X	
Project-based Rental Assistance		X	Mortgage and Major Home Improvement Loan		
SRO Rental Assistance		X	Insurance for Urban Renewal Areas (Section 220)	X	
			Multifamily Rental Housing for Moderate-Income Families		
Single Family Property Disposition Homeless Initiative		X	Section 221(d)(3)		X
Emergency Shelter Grants	X		Section 221(d)(4)	X	
Housing Opportunities for Persons With Aids (HOPWA)	X		Existing Multifamily Rental Housing (Section 223(f))	X	
Surplus Properties (Title V)		X	Supplemental Loans for Multifamily Projects (Section 241)	X	
Supportive Housing Demonstration Program Transitional			Supportive Housing for Persons with Disabilities		
Housing Component	X		(Section 811)		X
Supportive Housing Demonstration Program Permanent			HOPE 2: Homeownership of Multifamily Units (Title IV)		X
Housing Component	X		Low-Income Housing Preservation and Resident		
Supplemental Assistance for Facilities to Assist the			Homeownership (Title VI)		X
Homeless (SAFAH)	X		Emergency Low-Income Housing Preservation (Title II)		X
Supportive Housing Program	X		Flexible Subsidy (Section 201)		X
Section 8 SRO Mod Rehab for Homeless Individuals		X			
Innovative Demonstration Program	X				
			Public and Indian Housing		
			Section 8 Project-Based Certificate Program		X
Housing			Section 8 Tenant Based Certificate and Voucher Program	X	
Single Family Programs			Section 8 Moderate Rehabilitation Program		X
One- to Four-Family Home Mortgage Insurance (Section 203(b) and (i))	X		Public Housing Development		X
			Public Housing Operating Subsidy		X
Rehabilitation Mortgage Insurance (Section 203(k))	X		Public Housing Modernization (Comprehensive Grant		
Homeownership Assistance for Low- and Moderate-Income			Program)		X
Families (Section 221(d)(2))		X	Public Housing Modernization (Comprehensive		
Homes for Service Member (Section 222)	X		Improvement Assistance Program)		X
Housing in Declining Neighborhoods (Section 223(e))	X				
Condominium Housing (Section 234)	X				
Housing in Military Impacted Areas (Section 238)	X				
	X				

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Appendix E—Elements of a State Certification Program

Congress has assigned Federal responsibility to the Environmental Protection Agency (EPA) for the definition, implementation, and oversight of State Certification Programs for workers, contractors, and inspectors engaged in the detection and reduction of lead-based paint hazards. The Department of Housing and Urban Development (HUD) has a strong interest in the strength and rigor of the EPA program, because HUD must rely on the effectiveness of the EPA program to assure the safe detection and reduction of those lead-based paint hazards.

In October 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act. This legislation requires EPA to promulgate regulations governing the accreditation of training programs, the certification of contractors and the training of workers engaged in lead-based paint activities. These regulations must contain work practice standards. Finally, EPA must develop a model State program containing procedures for States to gain EPA approval of their programs.

Under the statute, lead-based paint activities are defined as:

(a) In the case of target housing: risk assessment, inspection, and abatement; and

(b) In the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure: identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

EPA is currently developing the regulations required under this new legislation. However, since EPA's regulations are not currently available, States that commit to develop appropriate accreditation and certification programs as required by this NOFA are encouraged to enact broad enabling statutes. Legislation that is overly prescriptive may need to be modified in order to be acceptable under EPA's upcoming regulations.

HUD and EPA can, however, at this time define a minimum set of basic elements that *must* be contained in the enabling legislation. They are enumerated in #1 below. HUD and EPA also believe that additional elements should be included in legislation. These are identified in #2 below.

1. The enabling statute, at a minimum, shall contain the following elements:

a. *Agency.* Establish an agency, or agencies, or designate an existing State agency, or agencies, to implement the State program.

b. *Certification.* Authorize and direct the agency, or agencies, to promulgate regulations requiring the certification of contractors, that offer to perform lead-hazard detection or lead-hazard reduction services.

c. *Worker Training.* Authorize and direct the agency, or agencies to promulgate regulations setting training requirements for workers, inspectors, and other persons directly and substantially involved in the performance of lead-based paint activities. Such regulations shall establish minimum acceptable levels of training, and periodic refresher training for each class of workers and require that training shall be provided by accredited training providers.

d. *Accreditation of Training Providers.* Authorize and direct the agency, or agencies, to promulgate regulations to establish the accreditation of training programs. The legislation shall require that the regulation cover the following: (1) Minimum requirements for the accreditation of training providers; (ii) minimum training curriculum requirements; (iii) minimum training hour requirements; (iv) minimum hands-on training requirements; (v) minimum trainee competency and proficiency requirements; and (vi) minimum requirements for training program quality control.

e. *Standards.* Authorize and direct the agency, or agencies, to promulgate regulations establishing standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

f. *Compliance.* Authorize and direct the agency, or agencies, to promulgate regulations that will require any activity, involving lead-hazard detection or lead-hazard reduction procedures, to comply with agency regulations and to use certified and accredited personnel.

g. *Enforcement.* Authorize and direct the agency, or agencies, to promulgate regulations that provide for the enforcement of the State Certification Program, and that establish suitable sanctions, for those who fail to comply with program requirements. The regulations shall include provisions for the decertification and deaccreditation of programs and personnel.

h. *Federal Funding Eligibility.* Authorize and direct the agency, or agencies, to revise its regulations and procedures from time to time to assure that State lead-hazard activities continue to be eligible for Federal funding, by meeting the State certification program standards and other requirements that may from time to time be promulgated by EPA, HUD, and such other Federal agencies as may have jurisdiction over lead hazards;

i. *Reciprocity.* Authorize the agency, or agencies, to establish liaison with the other states having a State Certification Program to assure the maximum consistency of program requirements, in order to facilitate reciprocity of certification and accreditation among the several States;

2. In addition to the mandatory elements present in #1 above, HUD and EPA strongly recommend that the enabling legislation include:

a. *Staffing.* Authorize and direct the agency, or agencies, to dedicate suitable staff and to acquire suitable space, equipment, supplies and other items necessary for the operations of the program.

b. *Fees.* Authorize the agency, or agencies, to collect such fees for certification, accreditation, and other reviews as State policy may determine to be necessary to help support the activities of the agency or agencies.

c. *Laboratory Oversight.* Authorize and direct the agency, or agencies, to cooperate with EPA in any joint oversight procedures EPA may propose for laboratories accredited under the EPA laboratory accreditation program for laboratories that offer to provide lead analysis services.

d. *Data Collection.* Authorize the agency, or agencies, to establish a unit for the collection and analysis of data on lead-hazard detection and lead-hazard reduction activities in the State, and on the certification, accreditation, and enforcement activities of the agency.

e. *Public Education.* Authorize the agency, or agencies, in cooperation with other relevant agencies of the State, to conduct programs of public education on the nature and consequences of lead hazards and on the need for lead-hazard reduction activities to be conducted under careful supervision and by certified and accredited personnel in order to assure the public safety.

Appendix F—Statement of Requirements: Lead-Based Paint Element for Comprehensive Housing Affordability Strategy

Section 1011 of the Housing and Community Development Act of 1992 established the requirement that, to be considered an eligible applicant for Lead-Based Paint Grant Program funds, a State or unit of general local government must have a Comprehensive Housing Affordability Strategy (CHAS) that has been approved by HUD. States and units of local government that receive direct allocations of HOME Program or Community Development Block Grant Program funds are required to submit a full CHAS that includes a lead-based paint element. The instructions for developing a CHAS for Fiscal Year 1994 (including the lead-based paint element) are set out in CPD Notices 93–02 (for units of general local government) and 93–03 (for States). The deadline for submission of a FY 1994 CHAS was December 31, 1993.

Any otherwise eligible jurisdiction that does not have an approved Fiscal Year 1994 CHAS for the purposes of HOME, CDBG or other funding sources, but wishes to apply for funds pursuant to this NOFA, may develop an abbreviated strategy for the purposes of meeting the CHAS requirement, in accordance with Section 91.25 of the CHAS final rule and CPD Notice 94–04, January 21, 1994. Prospective applicants that plan to prepare an abbreviated strategy should note that these strategies must be received by HUD not later than the deadline established for applications pursuant to this NOFA. Failure to submit the abbreviated strategy by this deadline will result in disqualification of the jurisdiction's application.

Applicants must include a separate copy of their CHAS lead-based paint element or abbreviated strategy as part of the grant application. The Lead-Based Paint Grant Program does not require the submission of a certification of consistency with a CHAS.

Appendix G—Sec. 215 of the National Affordable Housing Act (Pub. L. 101–625): Qualification as Affordable Housing

(a) Rental Housing.—

(1) Qualification.—Housing that is for rental shall qualify as affordable housing under this title only if the housing—

(A) bears rents not greater than the lesser of (i) the existing fair market rent for

comparable units in the area as established by the Secretary under section 8 of the United States Housing Act of 1937, or (ii) a rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes;

(B) has not less than 20 percent of the units (i) occupied by very low-income families who pay as a contribution toward rent (excluding any federal or State rental subsidy provided on behalf of the family) not more that 30 percent of the family's monthly adjusted income as determined by the Secretary, or (ii) occupied by very low-income families and bearing rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g)(2) of the Internal Revenue Code of 1986;

(C) is occupied only by households that qualify as low-income families;

(D) is not refused for leasing to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility;

(E) will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act; and

(F) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 109 of this Act.

(2) Adjustment of Qualifying Rent—The Secretary may adjust the qualifying rent established for a project under subparagraph (A) of paragraph (1), only if the Secretary finds that such adjustment is necessary to support the continued financial viability of the project and only by such amount as the Secretary determines is necessary to maintain continued financial viability of the project.

(3) Increases in Tenant Income—Housing shall qualify as affordable housing despite a temporary noncompliance with subparagraph (B) or (C) of paragraph (1) if such noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to the Secretary are being taken to ensure that all vacancies are filled in accordance with paragraph (1) until such noncompliance is corrected. Tenants who no longer qualify as low-income families shall pay as rent not less than 30 percent of the family's adjusted monthly income, as recertified annually.

(4) Mixed-Income Project—Housing that accounts for less than 100 percent of the dwelling units in a project shall qualify as affordable housing if such housing meets the criteria of this section.

(5) Mixed-Use Project—Housing in a project that is designed in part for uses other than residential use shall qualify as affordable housing if such housing meets the criteria of this section.

(b) Homeownership—Housing that is for homeownership shall qualify as affordable housing under this title only if the housing—

(1) has an initial purchase price that does not exceed 95 percent of the median purchase price for the area, as determined by the Secretary with such adjustments for differences in structure, including whether the housing is single-family or multifamily, and for new and old housing as the Secretary determines to be appropriate;

(2) is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;

(3) is made available for initial purchase only to first-time homebuyers;

(4) is made available for subsequent purchase only—

(A) to persons who meet the qualifications specified under paragraph (2), and

(B) at a price consistent with guidelines that are established by the participating jurisdiction and determined by the Secretary to be appropriate—

(i) to provide the owner with a fair return on investment, including any improvements, and

(ii) to ensure that the housing will remain affordable to a reasonable range of low-income homebuyers; and

(5) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 109 of this Act.

[FR Doc. 94–9690 Filed 4–20–94; 8:45 am]

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federal register

Thursday
April 21, 1994

Part VI

Department of Housing and Urban Development

24 CFR Parts 50, 55, 58, and 200
HUD Procedure for the Implementation of Executive Order 11988; Revision of HUD Minimum Property Standards for One- and Two-Family Dwellings; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 55, 58, and 200

[Docket No. R–94–1436; FR–865–F–05]

RIN 2501–AA23

HUD Procedure for the Implementation of Executive Order 11988; Revision of HUD Minimum Property Standards for One- and Two-Family Dwellings

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD is adopting procedures to implement Executive Order 11988 on floodplain management. The purpose of these procedures is to provide direction for compliance with the executive order for all HUD programs (except those explicitly excluded) both by HUD and by certain state and local grant recipients, before their respective decisions to approve a proposed action that involves HUD financial assistance; and would affect a floodplain. The rule is designed as a balanced rule that implements the executive order while cutting costs and review time for HUD-related housing and other actions by reducing or eliminating processing steps where appropriate. In addition to the implementation procedures, HUD is revising the Department's Minimum Property Standards for One- and Two-Family Dwellings to accord with the executive order on floodplain management, and with WRC Guidelines, FEMA regulations, and current HUD mortgage underwriting practices. HUD environmental review regulations also are being revised in this rule, to cross-reference to the decision making process under this rule.

EFFECTIVE DATE: May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Concerning 24 CFR parts 50, 55, and 58: Richard H. Broun, Director, Office of Environment and Energy, room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. For telephone communications, contact Truman Goins, Water Resources Coordinator, Office of Environment and Energy, at (202) 708–2894, TDD (202) 708–2565. With respect to 24 CFR part 200, contact John E. Bonkoski, Office of Housing, at (202) 708–1740, TDD (202) 708–2566. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule's amendments to 24 CFR part 55 have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The paperwork approval number(s), when assigned, will be published in a separate **Federal Register** document.

The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for HUD, Washington, DC 20503.

I. Background

On January 4, 1990, HUD published in the **Federal Register** (55 FR 396) a Notice of Proposed Rulemaking to add 24 CFR part 55 and to amend 24 CFR parts 50, 58 and 200 to implement Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands (42 FR 26951, 26961, May 25, 1977). A correction to the Table in proposed § 55.11(c) was published on January 25, 1990 (55 FR 2533). The executive orders establish Federal policy to assure that Federal programs avoid adverse impact on wetlands and floodplains; minimize destruction, loss or degradation of wetlands; preserve and enhance the natural and beneficial values of wetlands; reduce risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and to the extent possible, restore the natural and beneficial values served by floodplains.

This final rule implements Executive Order 11988 only and has been revised to eliminate references in the proposed rule to coverage of wetlands. The Department is not proceeding with a final rule that would apply to wetlands under Executive Order 11990 because the Administration is currently revising Federal policy concerning wetlands. HUD personnel will continue to follow outstanding instructions in implementing Executive Order 11990.

The final rule fulfills the requirement of the Floodplain Management executive order to issue implementing procedures and provides essential, overdue guidance to program participants and HUD staff that is tailored to HUD programs. The rule reduces the impact of the order's decision making procedures on housing and other program costs by: (1) Excluding from review types of actions that have no real floodplain impact; and (2) simplifying decision making procedures, *e.g.*, contemplating the use of existing data sources and meshing necessary reviews under the order with other required environmental processing. The final rule does not contain significant changes from the proposed rule, other than the deletion of wetlands coverage. Specific comments received on the proposed rule, HUD responses, and changes from the proposed rule are discussed below in part II of this preamble.

Under Executive Order 11988, Federal agencies should avoid directly or indirectly supporting floodplain development or otherwise adversely affecting floodplain areas unless there are no practicable alternatives to such actions. Federal agencies are required to implement Executive Order 11988 with respect to acquiring, managing and disposing of Federal property; providing Federally undertaken, financed, or assisted construction and improvements; and conducting Federal activities and programs affecting land use. The executive order also provides certain requirements for the proposed disposition of properties owned by Federal agencies and the creation of leases, easements, and rights-of-way on Federally owned properties.

The proposed rule set out procedures by which HUD (and state and local grantees that assume environmental responsibilities under 24 CFR part 58) would implement both executive orders. Principally, it set out the eight-step decision making procedure described in the U.S. Water Resource Council's Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978), set out the applicability of that procedure to HUD actions by type of action (critical or non-critical) and location, proposed the inapplicability of the procedure and other requirements of the executive orders to certain types of proposed actions, and linked the procedure to the Department's environmental review procedures under 24 CFR parts 50 and 58. The proposed rule also proposed the revision of the HUD Minimum Property Standards (MPS) regulations for new construction of one- and two-family dwellings to conform to the 100-year base flood standard for new

construction and substantial improvement of residential structures with basements under regulations of the National Flood Insurance Program (NFIP); comparable standards were proposed for residential structures that are without basements, are located in coastal high hazard areas, or contain critical actions.

In the preamble to the proposed rule, the Department also specifically requested comment on an alternative standard, not set out in the proposed rule, that would amend the MPS to require that (1) the elevation of the lowest floor in one- and two-family residential structures without basements in special flood hazard areas be at or above one foot above the FEMA established 100-year base flood (one-foot free board); and (2) that the underside of the lowest floor of one- and two-family structures in coastal high hazard areas and their horizontal supports be at least one foot above the base flood level where FEMA has determined that level without establishing stillwater elevation.

II. Comments and Responses

This proposed rule was published in the **Federal Register** for public comment within 60 days. The Department received six responses within this comment period and two after the March 5, 1990 comment period deadline. These late comments generally repeated or supplemented comments previously received. Public comments were received from eight sources: Four U.S. governmental agencies, one professional individual, one national trade association and two national professional associations. The Department is responding to all comments and suggestions that concern those portions of the proposed rule that implement Executive Order 11988. Because of the decision not to proceed at this time with those provisions of the rule that would implement Executive Order 11990, the following discussion does not address comments relating to protection of wetlands.

In reference to the proposed prohibition on HUD financial assistance in floodways except for functionally dependent uses (§ 55.1(c)(1)), a commenter suggested that HUD include the definitions and procedural requirements of 44 CFR 60.3(d)(3) of the National Flood Insurance Program (NFIP) regulations regarding prohibitions of encroachments that would increase flood levels.

The rule prohibits support for project development in a floodway unless it meets the criteria of a functionally dependent use (§ 55.2(b)(5)) and also generally requires a determination of no practicable alternative to location in the floodplain. Notwithstanding this review, all projects, before HUD action, are subject to local review and approval for compliance with the NFIP regulations in accordance with the locality's contract with FEMA. HUD, therefore, does not believe it is necessary to repeat the NFIP requirements in its regulations, and has not adopted this suggestion.

A commenter suggested that the Areawide compliance procedures (§ 55.25) be revised to require HUD to undertake a periodic review to assure that initial conclusions remain valid and that floodplain management criteria of the NFIP regulations are being applied. The commenter raised a concern that individual structures might be built at less than the 100-year flood elevation (base flood) if a periodic review is not undertaken.

HUD will only enter into an Areawide process where communities are agreed participants in the procedure and its floodplain management goals and objectives. Further, HUD will only execute this process with communities that are participating members in good standing with NFIP. The objective of the Areawide process is to eliminate delays, duplication, costly publications, etc. from project-by-project reviews, where it is agreed, demonstrated and documented that all actions to be undertaken in a specific area of a floodplain are and will be in compliance with the locality's floodplain management plan and the full extent of the NFIP regulations. For HUD programs and projects, all appropriate design drawings, plot plans, etc. would need to demonstrate compliance with local requirements and acceptance under the NFIP. The Department notes that under the rule, individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance require a determination by HUD (or a grant recipient under 24 CFR part 58) as to whether the action accords with areawide strategy; where the individual action does not accord with the areawide strategy, specific development and mitigation measures will be a condition of HUD's approval of the action. (See § 55.25(c).) Periodic spot checking of individual structures would also come under the regulatory code enforcement procedures of the local government authority. Beyond these enforcement mechanisms, questions concerning a community's fulfillment of its legal and contractual obligations to FEMA and the NFIP are the responsibility of FEMA to pursue. HUD will respond appropriately to any notices issued by FEMA concerning participating communities. The final rule will remain unchanged, except for the deletion of references to wetlands and wetland protection.

A commenter suggested that in the definition of "substantial improvement" (§ 55.2(b)(9)), the "50 percent of market value test" contained in paragraph (A) should be applied also to projects that meet the criteria of increased unit density or increased project use in paragraph (B).

The language of paragraph (B) stands by itself. It is consistent with criteria relating to rehabilitation projects in HUD environmental regulations at 24 CFR 50.20(c)(1) and 58.35(a)(4)(i)(A) and (ii)(B)(*1*). HUD does not believe it is necessary or desirable to apply the increase-in-value test of paragraph (A) to actions that will increase unit density or project use to the extent set out in paragraph (B).

Two commenters discussed HUD procedures for disposing of foreclosed properties. One commented that under § 55.22 (conveyance restrictions), HUD should list the third alternative of withholding properties from conveyance. Two other comments expressed concern that these properties may be subject to repeated flooding or pose safety hazards, or the properties may, after purchase, be converted to less compatible uses. One suggested that, as a minimum, one- to four-family properties, which the proposed rule excluded from the eight-step decision making process, should be subject to the five steps applicable to multifamily and bulk sales dispositions; the other recommended that disposition of HUD properties be subject to the public notification requirements (*i.e.*, Steps 2 and 7) and that criteria for evaluating potential impacts of the disposition be developed.

As explained in the preamble to the proposed rule, HUD is obligated to dispose of properties in its inventory and return the proceeds to the insurance fund as quickly as possible so as to retain the integrity and security of the fund. Therefore, withholding properties from conveyance is not an available option. HUD does not believe going through the entire eight-step process for the disposition of foreclosed properties located in a floodplain would further floodplain management objectives. In these cases, there is no locational alternative to the action and in any event the prospective purchaser of the property is notified of its floodplain location. Moreover, in the vast majority of cases, these properties have never

been flood damaged. If previously damaged properties pose a potential for repeated damage or a safety hazard, community enforcement of the NFIP requirements and public health and safety laws, and FEMA assistance (purchasing properties deemed to create a permanent hazard or liability), are the appropriate means of addressing this issue. This is also the case regarding possible future "conversion" to less compatible uses. The local community regulates land use controls and in its NFIP contract with FEMA, a floodplain management plan/program identifies permitted and compatible uses. Therefore, HUD does not feel the need to change its proposed provisions regarding the disposition of foreclosed property (except to delete the reference to wetlands).

Section 55.12(c)(6) of the proposed rule would exclude HUD approval of a project site from the eight-step decision making process where an "incidental" portion of the site is in an adjacent floodplain or wetland, if the proposed construction and landscaping activities (except for certain minor activities) do not occupy or modify the floodplain or wetland; appropriate provision is made for site drainage; and a restriction is placed on the use of the property to preserve the floodplain or wetland. A commenter recommended defining or clarifying the terms "incidental" and "appropriate" and expressed concern that the regulation allowed drainage of wetlands. The commenter also suggested that sites that are described in § 55.12(c)(6) should be subject to an analysis of cumulative and indirect impacts and should not be excluded from the eight-step decision making process. Another commenter also noted the lack of definitions for "appropriate" and "minor" and suggested that all or part of the decision making process should be applied in order to allow only unavoidable impacts.

As expressed in the preamble and text of the proposed rule, § 55.12(c)(6) would only have been applicable to projects that "do not occupy or modify the wetland [or] * * * floodplain". This final rule does not apply to wetlands as such. In any event, HUD does not believe any stronger explanation is necessary as to the intent or objective not to affect or harm a wetland or floodplain through construction or development activity. Therefore, no further benefit will be gained by completing a procedural eight-step process. Cumulative and indirect impacts may be addressed under applicable NEPA assessment requirements. The term "incidental" refers to an area that is incidental in direct proportion to the overall size of a site under HUD review. The term "minor" is self-explanatory in the context in which it is used. Further, due to HUD's specifically imposed constraint that activities may "not occupy or modify the * * * floodplain", the floodplain cannot, except as passive open or green space, be utilized in the development or support of any project activity. HUD also notes that the requirement for "appropriate provision * * * for site drainage" in § 55.12(c)(6)(ii) cannot be read to conflict with the prohibition in § 55.12(c)(6)(i) against modifying the floodplain.

Section 55.12(c)(9) of the proposed rule states that part 55 would not apply to "HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o)". The Department of Veterans Affairs expressed concern that this provision implies that the VA approves subdivisions.

Section 55.12(c)(9) merely acknowledges HUD's obligation under section 535 to accept any VA subdivision approvals without performing further reviews. HUD acknowledges that shortly after section 535 was enacted, the VA unilaterally determined to discontinue processing and approving subdivisions. Whether or not VA approves subdivisions, however, this section will have no effect on VA's loan guarantee program. HUD believes it must reference the statute. It is also possible that sometime in the future, the VA could resume processing subdivisions.

One commenter suggested that HUD consider expanding the definition of critical actions in § 55.2(b)(2) to include housing for independent living for the elderly in an initial evaluation, and that the 100-year floodplain protection should only be permitted when all residents are relatively mobile and there is sufficient warning time for evacuation. The commenter also suggested that housing in flash flood areas should be considered a critical action.

HUD believes that the condition of relative mobility is more than met under the basic requirements of the elderly program. That is, all residents must be self sufficient and capable of independent living without support assistance. The commenter failed to understand the intent of HUD's proposed rule on program implementation. HUD will not blindly support development in a special flood hazard area if it has been identified on a FEMA flood hazard area map. As with all HUD actions that are subject to the decision making process of the rule, if a project or site in a flood hazard area is not rejected outright, the decision making process of this rule will be followed before any decision to proceed. HUD also sees no basis to single out housing in flash flood areas as a critical action. This suggestion is impractical since FEMA does not identify flash flood areas on its maps or define what constitutes a flash flood area. Moreover, any HUD approved activity will provide protection and security not only for the improvements but also for the potential residents, within the parameters of the locality's floodplain management agreements with FEMA and the NFIP.

This commenter also raised the issue of housing for the hearing and sight impaired, developmentally disabled and chronically mentally ill as types of housing that should be considered a critical action. The commenter also expressed concern that projects for handicapped persons under the Supportive Housing Demonstration Program were not treated as critical actions under the final rule for that program (see 54 FR 47023–47054, November 8, 1989), as originally proposed.

The preamble to that final rule provided a discussion of HUD's original intent to include all generically designated handicapped housing as a critical action and the explanation of why it was being deleted in the final rule. Since then, no additional information or data on the subject has been presented to the Department. Therefore, HUD declines to adopt this suggestion.

A commenter suggested that presentation of the decision making process set forth in § 55.20 be expanded to include some of the discussion contained in the Water Resources Council (WRC) Floodplain Management Guidelines for each of the eight steps.

HUD considered this issue when preparing the Proposed Rule and determined not to include any narrative discussion from the WRC Guidelines in its regulations. It is HUD's intent to issue a Departmental Handbook on procedures for implementing the eight step process. The Handbook would include specific and detailed procedures and examples, sample notices, distribution systems, review methods, project and source documentation, etc., oriented to the type of projects eligible for HUD program assistance. Accordingly, HUD has not adopted this comment.

The National Association of Home Builders (NAHB) objected to the application of the decision making process under this rule to HUD's approval of new subdivisions for purposes of issuing home mortgage insurance under the National Housing Act, and to the issuance of HUD commitments to insure more than four home mortgages in a new subdivision. The NAHB contended that these actions are not, or at least need not be considered, major Federal actions that significantly affect the quality of the human environment as this term is used in the National Environmental Policy Act of 1969 (NEPA), because HUD commitments to insure mortgages are not essential to the development of the subdivision. Accordingly, the NAHB asserted that HUD subdivision approval procedures should be listed in § 55.12 as categorically excluded from the decision making process.

HUD does not agree with these comments. The Department has consistently considered HUD "subdivision approval" as being a Federal action that is subject to NEPA environmental review under HUD regulations at 24 CFR part 50. This view is in accord with the CEQ regulatory definition of major Federal action, which includes "actions with effects that may be major and which are potentially subject to Federal control and responsibility." 40 CFR 1508.18. HUD also notes that, contrary to this comment's assumption, there is nothing in the executive orders that requires actions covered thereunder to be delineated in the same manner as those covered under NEPA. In fact, the Floodplain Management Guidelines define "action" in terms of the Federal activities listed in section 1 of Executive Order 11988, including "conducting Federal activities and programs affecting land use." Moreover, section 4 of Executive Order 11988 and section 2(b) of Executive Order 11988 and section 2(b) of Executive Order 11990 specifically require procedures for early public review of Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under NEPA. Accordingly, HUD is not making any change in the rule in response to this comment. In any event, on August 3, 1993, HUD issued a final rule (58 FR 41328) that discontinued HUD's subdivision processing and approval requirements, effective September 2, 1993. Thus, the concerns raised by the commenter (NAHB) have become moot.

One commenter wanted further clarification of the term "comparative risk" as used in the preamble to the proposed rule in connection with modifying requirements of the executive orders. The reference was to the "comparative risks arising from various Federal programs and projects" as a criterion for initiatives approved by Federal authorities for modifying requirements in the executive orders, *i.e.*, to an expectation that agencies would implement the executive orders while giving necessary consideration to their mission for administering various programs and projects. HUD believes the narrative in the preamble to the proposed rule directly following the words "comparative risk" adequately indicates the Department's intent in using the term. Also, in table I, § 55.11(c), the commenter suggested that the types of "non-critical actions" category allowable in coastal high hazard areas be changed. The suggestion was to require actions to be both designed for the hazardous area and a "functionally dependent use" instead of either/or as proposed. Further, the commenter wanted HUD to limit all actions in a 100-year floodplain or wetland outside a high hazard area to those which are functionally dependent uses.

HUD has not accepted either of these comments. HUD believes that in coastal high hazard areas, the "either/or" criterion in conjunction with the decision making process is appropriate for assuring responsible Federal actions. In non-high hazard areas, to accept a restriction to only "functionally dependent uses" as a basis for limiting proposed actions in a 100-year floodplain would exceed the mandate of the executive order and the Water Resources Council's Floodplain Management Guidelines. Such an approach, which would allow only water-dependent uses such as marinas and waterfront parks, would effectively red-line housing assistance to entire communities that have been established in 100-year floodplains.

A commenter recommended that three items under the eight step process in § 55.20 be changed. First, the commenter recommended that the time period for comment under the first public notice under § 55.20(b)(2) be increased from 15 days to 30 days. HUD believes that 15 days is sufficient time for a reviewer to determine if it has an interest in a proposed action and to submit comments. It is important to note that the decision making process for activity affecting the floodplain and the specific project does not end at 15 days. It does establish a point after which the remaining procedural elements can be pursued and technical work may proceed. Second, in § 55.20(c)(1)(ii) the commenter recommended changing "identical objective" to "overall project purpose". HUD does not see any need to change the rule as proposed. Finally, in § 55.20 (d) and (f), the commenter recommended adding requirements for identification and evaluation of cumulative impacts. HUD believes the procedures as written comply with the Floodplain Management Guidelines. If any further elaboration is necessary, it will be included in a Handbook on working procedures, definitions, documentation, etc. HUD does not believe any change is required and these sections will remain as written in the proposed rule (except for the deletion of references to wetlands).

A commenter suggested that HUD review other agencies' compliance with the executive orders when HUD accepts VA or FmHA subdivision approvals under § 55.12(c)(9) or adopts Executive Order reviews by other agencies under § 55.26.

HUD believes the rule as proposed properly addresses a statutory requirement, in the first instance, and provides adequate procedural safeguards to protect HUD's interest, in the second. The exclusion of VA and FmHA subdivision approval actions from HUD re-review is required by section 535 of the Housing Act of 1949, which states in part that each of the three agencies "shall each accept an administrative approval of any housing subdivision made by any of the others." With regard to adoption of another agency's review under § 55.26, HUD believes that conditions outlined in the rule provide sufficient assurances with respect to any review accepted through this adoption process. HUD does not accept these recommendations and no changes are made in response to this comment.

In response to a comment, HUD has made a minor change for consistency of terminology in § 55.1(c)(3)(i). The term "substantial rehabilitation" has been changed to "substantial improvement" to be consistent with the terminology defined in § 55.2.

A commenter suggested that in § 55.20(a), Step 1 of the decision making process, and in the corresponding discussion in the preamble to the proposed rule, the language be revised to reflect that the decision to allow the proposed action to take place in a floodplain or wetland will be based on the determination that such a site is the only practicable alternative for such an action. This comment has not been adopted since the suggested language is not germane to Step 1 of the decision making process (determining whether

the action is located in a floodplain) and the topic is covered in Steps 3 and 7 (§ 55.20 (c) and (g)) as set out in the proposed rule.

A commenter suggested that a definition of the term "practicable" which is similar to that provided in guidelines under the Clean Water Act 404 program and in the Executive Order be included in § 55.2. HUD has not adopted this suggestion. While neither Executive Order contains a definition of "practicable", the Floodplain Management Guidelines do contain a definition of this term, and the definitions contained in the Guidelines are explicitly incorporated by reference into part 55 under § 55.2(a).

A commenter stated that under § 55.20(g)(3) (Step 7), mitigation should be required and not left as an option, and suggested that additional language consistent with EPA/Corps mitigation procedures be added that would refer to measures designed to compensate for any unavoidable adverse impacts remaining after appropriate and practicable minimization.

HUD has not adopted this suggestion. Section 55.20(g)(3), which refers to "mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values", does not imply that such measures are optional. Moreover, to the extent that the additional language suggested by the commenter would require more than practicable minimization, along with restoration and preservation, the suggested language goes beyond what is required by the floodplain management executive order.

HUD has made additional changes from the proposed rule. Section 55.1(b) of the proposed rule set out the prohibition in section 202(a) of the Flood Disaster Protection Act of 1973 (FDPA) against financial assistance for acquisition or construction purposes in special flood hazard areas in communities that are not participating in the National Flood Insurance Program. Section 55.1(b) also listed three HUD programs involving formula grants to states to which this prohibition does not apply. The prohibition is inapplicable to those programs because section 3(a)(3) of the FDPA defines "financial assistance" to which the prohibition applies as any form of Federal assistance "other than general or special revenue sharing or *formula grants made to States*" (emphasis added). After the publication of the proposed rule, title II of the Cranston-Gonzalez National Affordable Housing Act (Pub.L. 101–625) enacted the HOME Investment in Affordable Housing (or HOME) program, under which funds will be provided to states (as well as local governments) by formula. Accordingly, HUD is revising the third sentence in § 55.1(b) of this final rule to add a reference to HOME funds provided to a state as one of the programs to which the prohibition does not apply. In addition, the sentence is being revised to indicate in more general terms that the prohibition does not apply to HUD financial assistance in the form of formula grants to states, including the programs listed. HUD has determined that public comment on these changes is unnecessary since the changes merely reflect the provisions of the FDPA and the enactment of an additional HUD program that falls within the FDPA exception for formula grants to states.

In the definition of "substantial improvement" in § 55.2(b)(9)(i), the word "modernization" has been added to the proposed rule's reference to "repair, reconstruction, or improvement" in paragraphs (A) and (B). This change merely adds a term often used in HUD assisted housing programs and does not change the scope of the definition.

In § 55.12(a), which lists programs to which certain decision making steps will not apply, paragraph (2) lists HUD's actions under section 223(f) of the National Housing Act for the purchase or refinancing of existing multifamily housing projects. The final rule has been revised to explicitly indicate that such projects include hospitals, nursing homes, board and care facilities, and intermediate care facilities. This change is made to clarify the Department's intent that all types of projects that may be insured under authority of section 223(f) would be covered by § 55.12(a)(2).

The final rule also includes a new paragraph (3) in § 55.12(a). Paragraph (3) indicates that Steps 2, 3, and 7 of the decision making process will not apply to certain HUD mortgage insurance actions for the repair, rehabilitation, modernization or improvement of existing multifamily housing projects (including nursing homes, board and care facilities and intermediate care facilities) and existing one- to four-family properties, just as these steps will not apply to Section 223(f) actions and certain property disposition actions. The housing mortgage insurance actions listed in paragraph (3) include actions that are in communities in good standing in the Regular Program of the NFIP, and that involve work which does not increase the number of units more than 20 percent, involve a conversion from nonresidential to residential land use, or significantly increase the footprint of the structure or paved areas. HUD has determined that these types of repair, rehabilitation, modernization and improvement projects have a *de minimis* impact on floodplain development and that the decision making steps involving public notices and identification of alternatives would serve no practical purpose in the context of this work on existing housing projects and units.

The final rule revises paragraph (1) of § 55.12(b), which lists categories of proposed actions to which the decision making process under the Order will not apply. Paragraph (1), as contained in the proposed rule, listed HUD's mortgage insurance actions for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities in good standing in the regular program of the NFIP, other than critical actions and properties in a floodway or coastal high hazard area. The final rule lists mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of such properties. HUD has determined not to limit this provision to mortgage insurance actions, when activities under other HUD programs, such as the HOME Investment Partnerships Program (see 24 CFR part 92), may include assistance for the purchase of existing one- to four-family properties, with equally *de minimis* impacts on floodplain development.

The final rule also includes a revision to § 55.12(b)(3). As originally proposed, this section excluded from the decision making process those HUD actions involving the disposition of individual HUD-acquired one- to four-family properties, in communities that are in good standing under the NFIP. On April 16, 1992, as part of a proposed rule eliminating HUD's subdivision review process, HUD proposed a revision to § 55.12(b)(3) that would eliminate the condition that the properties be in communities in good standing under the NFIP (57 FR 13592). This final rule contains the April 16, 1992 revision. A second proposed part 55 revision contained in the April 16, 1992 proposal would have added a paragraph (13) to § 55.12(c), which would have excluded from part 55 HUD's endorsement of mortgage insurance on one- to four-family properties located in a wetland and processed by a Direct Endorsement lender without prior HUD review. That revision is not adopted because this final rule does not address wetlands.

In § 55.12(c), which lists HUD actions to which part 55 does not apply, paragraph (7) of the proposed rule listed actions for interim assistance or emergency activities involving

imminent threats to health and safety. The final rule revises paragraph (7) to also list assistance under the Fire Safety Equipment Loan Insurance Program under section 232(i) of the National Housing Act as an activity to which part 55 does not apply. This program provides loans to existing nursing homes, intermediate care facilities and board and care facilities for the limited purpose of purchasing and installing fire safety equipment necessary for compliance with the 1987 edition of the Life Safety Code of the National Fire Protection Association or other codes approved by the Secretary of Health and Human Services or mandated by a State under the Social Security Act. Because this assistance is for improvements limited to fire safety equipment and is provided to existing facilities, it has little or no impact on floodplain development. Accordingly, HUD finds that, as with the other programs listed in § 55.12 (b) and (c), compliance with the Executive Order would serve no functional purpose for this program.

Section 55.20(e), which sets out Step 5 of the eight step decision making process, has been revised in the second sentence to indicate that all critical actions in the 500-year floodplain shall, in the case of new construction, be designed and built at or above the 100-year floodplain. This language is not a new requirement, but is merely added to clarify that critical actions, like non-critical actions, must be built at the 100-year level, and that there is no additional requirement that they be elevated to the 500-year flood level.

Finally, § 55.23 of the proposed rule has been removed as unnecessary. Section 55.23 would have required that any HUD document notifying the public of the availability of funds for a program (*e.g.*, Notices of Funding Availability (NOFAs) published in the **Federal Register**) indicate that all proposed sites in a floodplain or wetland are subject to compliance with part 55, and that grant recipients also comply with this requirement. HUD has determined that specific reference to part 55 in all such documents is duplicative. HUD intends that its NOFAs and/or the relevant HUD regulations or program guidelines will set forth the requirements, as applicable, for compliance with HUD's environmental procedures in 24 CFR part 50 or 58. Parts 50 and 58 will, with this final rule, specifically require compliance with part 55 along with a number of other environmental laws and authorities. Grant recipients that assume responsibility for compliance with environmental requirements under part 58 are responsible for assuring that the procedures required under part 55 are carried out. Accordingly, a specific requirement that compliance with part 55 be singled out for reference in all such HUD and grantee documents is unnecessary.

Comments on Part 200 (Minimum Property Standards)

As indicated above, the preamble to the proposed rule also requested comment on an alternative standard, not set out in the proposed rule, that would amend the MPS to require a one-foot freeboard above the FEMA 100-year flood level for one- and two-family dwellings without basements and in coastal high hazard areas. This standard would exceed the FEMA-required minimum elevation of these types of structure by one foot. As reflected in lower National Flood Insurance premiums for the higher elevation, discussed in the preamble to the proposed rule, this standard would reduce the chances that a home located in a special flood hazard area or coastal high hazard area would be flooded and would also reduce property damage to the structure and danger to the residents where elevation of a particular flood somewhat exceeds the base flood level, but it would increase the cost of constructing homes.

This alternative standard would require an increase in construction cost due to the necessity for one additional foot of fill in the case of slab construction, but lower flood insurance premiums over the period of homeownership would generally result in net savings for the homeowner.

The decreased chance of flooding and property damage would also result in a reduction in risks of loss to the FHA insurance funds from such damage for houses that are acquired by HUD following defaults by mortgagors, since HUD self-insures against flood and other losses during the period it holds such properties.

Two commenters supported the higher MPS elevation requirement, citing the additional protection from flood damage and the hardships of flooding for the homeowner, as well as the potential reduction of costs to the Federal Government in the areas of income tax casualty loss deductions and Federal individual family grants and temporary housing costs provided to persons affected by flooding. However, three of the four Federal Government agencies that commented on the proposed rule did not address the one-foot freeboard proposal, and the fourth agency, while generally supportive of the proposal, did not specifically prefer it over the 100-year flood elevation proposal.

In view of the apparent absence of a broad base of support for this proposal, along with the fact that it is not an explicit requirement of Executive Order 11988 and exceeds the requirements of the National Flood Insurance Program, HUD has determined not to proceed with the adoption of a one-foot freeboard requirement in this rulemaking. HUD may propose the adoption of a freeboard requirement in a separate rulemaking. Accordingly, the text of § 200.926d as proposed will be adopted, with only technical corrections in response to FEMA comments. This Final Rule will not contain a freeboard requirement.

In response to a comment, HUD has made a minor change in the MPS for consistency with NFIP requirements in 44 CFR 60.3(e). Section 200.296d(c)(4)(iii)(B) has been changed to require that "the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports"—rather than "the underside of the lowest floor of the structure and its horizontal supports"—shall be at or above the base flood level.

With regard to the proposed MPS language in § 200.926d(c)(4)(iii) regarding properties in coastal high hazard areas, a commenter suggested that if HUD is referring to the "stillwater" base flood elevations in coastal numbered A-zones, HUD should consider a greater level of protection for those structures in A-zones closer to the V-zones, where velocity and wave conditions would exist.

HUD has not adopted this comment. While there are some coastal high hazard areas that are based on stillwater elevations, it is HUD's understanding that eventually 100-year flood elevation levels for all coastal high hazard areas will be based on consideration of velocity and wave conditions rather than stillwater elevations. In the interim, in those coastal high hazard areas where only stillwater elevations are indicated on FEMA maps, it is not practicable, in HUD's view, to establish MPS elevation requirements that vary from the elevations shown on the FEMA maps.

One commenter commended HUD for supporting recognition of the 100-year flood standard and the NFIP regulations, but suggested that there was no benefit to the citation, in the MPS for residential structures with basements (§ 200.926d(c)(4)(i)), of NFIP regulations allowing variances and exceptions (44 CFR 60.6 (a) & (c)), since false expectations might be raised that variances are easily obtained.

It is not HUD's objective to raise false expectations of easily obtainable

variances or exceptions. However, HUD believes that this reference is necessary to provide a basis for HUD to except properties from the MPS elevation requirement where a community has previously approved new construction with either a variance or an exception. Without this provision, HUD would be placed in the position of rejecting properties at elevations approved by local governments in the exercise of their authority under the NFIP. The final rule will leave the references as proposed.

III. Other Matters

Paperwork Reduction Act

Both reporting and recordkeeping requirements exist in 24 CFR 55.27. That section, "Documentation", sets out the several areas of part 55 that require information collections.

Collectively, the reporting and recordkeeping requirements contained in this rule will affect an estimated 3200 applicants and grantees, each with an estimated .40 hours required to respond to the required questions. Accordingly, the total estimated additional information collection burden represented by the rule is 1280 hours.

Executive Order 12606

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a potential significant impact on the formation, maintenance, and general well-being of families.

Executive Order 12612

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that some of the policies contained in the rule have federalism implications. The regulation implements an eight-step decision making process under Executive Order 11988 for considering locational alternatives and design modifications to lessen risk and impact for HUD-assisted actions proposed for floodplains, and for choosing sites outside the floodplain where practicable. While HUD carries out this process for most HUD programs, the regulation will require states and units of general local government to carry out the eight-step process and other requirements of the rule if they are applicants that assume environmental review responsibilities under section 104(g) of the Housing and Community Development Act of 1974 (HCD Act of 1974) or under section 288 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) and HUD's implementing regulations in part 58. However, further review under Executive Order 12612 is not considered necessary because HUD has little or no discretion in requiring states and units of general local government to carry out the requirements of the rule where they assume other responsibilities under section 104(g) or section 288. Section 9 of E.O. 11988 provides that the responsibilities under the order may be assumed by applicants that assume environmental review responsibilities under the National Environmental Policy Act of 1969 (NEPA), for projects covered by section 104(h) (now 104(g)) of the HCD of 1974. The executive order thus contemplates state and local assumption of responsibilities under the orders whenever responsibilities under NEPA (and, under later amendment to section 104, responsibilities under other provisions of law to be specified by the Secretary) are assumed. As a practical matter, bifurcation of NEPA and Executive Order 11988 responsibilities would not be feasible. The language of section 288 of NAHA clearly is patterned on section 104(g) and contemplates state and local assumption of the same responsibilities. Review under Executive Order 12612 is also unnecessary because HUD's regulations at 24 CFR part 58, implementing section 104(g) of the HCD Act of 1974, have long provided for state and local governmental assumption of NEPA, Executive Order, and other environmental review responsibilities. State and local governments thus already have been assuming and carrying out these responsibilities for many years. Part 55 merely describes and codifies more specifically the implementing policies and procedures under Executive Order 11988.

Executive Order 12866

This rule was reviewed as a significant rule and approved by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review, which was signed by the President on September 30, 1993.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary, by approving this rule, certifies that the rule does not have a significant economic impact on a substantial number of small entities. This rule does not prohibit HUD support of activities in floodplains (except for certain activities in floodways and coastal high hazard areas), but rather it creates a consistent departmental policy governing such support. The revision of § 200.926d(c)(4) of the HUD MPS regulations merely maintains the current Federal standard under Executive Order 11988 and FEMA's NFIP regulations, in addition to incorporating current HUD mortgage underwriting standards and Field Office floodplain engineering standards.

NEPA

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Semiannual Agenda of Regulations

This rule is listed as item number 1468 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56415) under Executive Order 12291 and the Regulatory Agenda.

Catalog of Federal Domestic Assistance

The programs affected by this rule are listed in the Catalog of Federal Domestic Assistance under program numbers 14.103 through 14.852.

List of Subjects

24 CFR Part 50

Environmental protection, Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

24 CFR Part 55

Environmental protection, Floodplain management and the protection of wetlands.

24 CFR Part 58

Environmental protection, Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum Property Standards, Mortgage insurance, Organization and functions (Government agencies), Penalties,

Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR parts 50, 58, and 200 are amended, and a new part 55, consisting of §§ 55.1 through 55.27, is added, as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4332; and Executive Order 11991, 42 FR 26967 (May 24, 1977).

2. In § 50.4, paragraph (b)(3) is removed, and paragraphs (b) (1) and (2) are revised to read as follows:

§ 50.4 Other environmental statutes, Executive orders and HUD standards.

* * * * *

(b) *Floodplain management and wetland protection.* (1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128).

(2) Executive Order 11988 (Floodplain Management), 42 FR 26951 (May 25, 1977), as interpreted in HUD regulations at 24 CFR part 55, and Executive Order 11990 (Protection of Wetlands), 42 FR 26961 (May 25, 1977). (For an explanation of the relationship between the decision making process in this 24 CFR part 55 and in this part, see § 55.10 of this chapter.)

* * * * *

3. A new part 55 (consisting of §§ 55.1 through 55.27) is added to title 24, to read as follows:

PART 55—FLOODPLAIN MANAGEMENT

Subpart A—General

Sec.

55.1 Purpose and basic responsibility.
55.2 Terminology.
55.3 Assignment of responsibilities.

Subpart B—Application of Executive Order on Floodplain Management

55.10 Environmental review procedures under 24 CFR parts 50 and 58.
55.11 Applicability of Subpart C decision making process.
55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

Subpart C—Procedures for Making Determinations on Floodplain Management

55.20 Decision making process.
55.21 Notification of floodplain hazard.
55.22 Conveyance restrictions for the disposition of real property.
55.23 Reserved.
55.24 Aggregation.
55.25 Areawide compliance.
55.26 Adoption of another agency's review under the executive orders.
55.27 Documentation.

Authority: 42 U.S.C. 3535(d) and 4001–4128; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117.

Subpart A—General

§ 55.1 Purpose and basic responsibility.

(a) This part implements the requirements of Executive Order 11988, Floodplain Management, and employs the principles of the Unified National Program for Floodplain Management. It covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain for which approval is required either from HUD under any applicable HUD program or from a grant recipient subject to 24 CFR part 58. This part does not prohibit approval of such actions (except for certain actions in high hazard areas), but provides a consistent means for implementing the Department's interpretation of the executive order in the project approval decision making processes of HUD and of grant recipients subject to 24 CFR part 58. The implementation of Executive Order 11988 under this part shall be conducted by HUD, for Department-administered programs subject to environmental review under 24 CFR part 50, and by authorized recipients of HUD financial assistance subject to environmental review under 24 CFR part 58.

(b) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction purposes in any "area having special flood hazards" (a flood zone designated by the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I) and the State-administered Rental Rehabilitation Program (24 CFR 511.51), Emergency Shelter Grant amounts allocated to States (24 CFR parts 575 and 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701–12839).

(c) Except with respect to actions listed in § 55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994 with respect to:

(1) Any action, other than a functionally dependent use, located in a floodway;

(2) Any critical action located in a coastal high hazard area; or

(3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use. An action will be considered to be designed for location in a coastal high hazard area if:

(i) In the case of new construction or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements):

(A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year floodplain) applicable at the time the original improvements were constructed; or

(B) If the original improvements were constructed before FEMA standards for the 100-year floodplain became effective or before FEMA designated the location of the action as within the 100-year floodplain, the work would meet at least the earliest FEMA standards for construction in the 100-year floodplain.

§ 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988 and in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) issued by the Water Resources Council; and the terms "criteria" and "Regular Program", shall follow the definitions contained in FEMA regulations at 44 CFR 59.1.

(b) The definitions of the following terms in Executive Order 11988 and related documents affecting this part are modified for purposes of this part:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) under FEMA regulations as Zone V1–30, VE, or V. (FIRMs as well

as Flood Hazard Boundary Maps (FHBM) shall also be relied on for the delineation of "100-year floodplains" (§ 55.2(b)(8)), "500-year floodplains" (§ 55.2(b)(3)), and "floodways" (§ 55.2(b)(4)).

(2)(i) *(Critical action* means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that:

(A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(B) Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or

(C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

(ii) Critical actions shall not be approved in floodways or coastal high hazard areas.

(3) *500-year floodplain* means the minimum floodplain of concern for Critical Actions and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year. (See § 55.2(b)(1) for appropriate data sources.)

(4) *Floodway* means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term "floodway" as used here is consistent with "regulatory floodways" as identified by FEMA. (See § 55.2(b)(1) for appropriate data sources.)

(5) *Functionally dependent use* means a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, waterfront park, and many types of bridges).

(6) *High hazard area* means a floodway or a coastal high hazard area.

(7) *100-year floodplain* means the floodplain of concern for this part and is the area subject to a one percent or greater chance of flooding in any given year. (See § 55.2(b)(1) for appropriate data sources.)

(8)(i) *Substantial improvement* means either:

(A) Any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(*1*) Before the improvement or repair is started; or

(*2*) If the structure has been damaged, and is being restored, before the damage occurred; or

(B) Any repair, reconstruction, modernization or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.

(ii) *Substantial improvement* may not be defined to include either:

(A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

(B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.

(iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered "minor improvements".

§ 55.3 Assignment of responsibilities.

(a)(1) *The Assistant Secretary for Community Planning and Development* (CPD) shall oversee: (i) The Department's implementation of the order and this part in all HUD programs, and

(ii) The implementation activities of HUD program managers and grant recipients for HUD financial assistance subject to 24 CFR part 58.

(2) In performing these responsibilities, the Assistant Secretary for CPD shall make pertinent policy determinations in cooperation with appropriate program offices and provide necessary assistance, training, publications, and procedural guidance.

(b) *Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA)* shall: (1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain;

(2) Ensure that actions approved by HUD or grant recipients are monitored and that any prescribed mitigation is implemented;

(3) Ensure that the offices under their jurisdiction have the technical resources to implement the requirements of this part; and

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures necessary to comply with the requirements of this part.

(c) *Recipient Certifying Officer.* In accordance with section 9 of Executive Order 11988, Certifying Officers of grant recipients administering activities subject to 24 CFR part 58 shall: (1) Comply with this part in carrying out HUD-assisted programs, and

(2) Monitor approved actions and ensure that any prescribed mitigation is implemented.

Subpart B—Application of Executive Order on Floodplain Management

§ 55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA) including a finding of no significant environmental impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17 (a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.36. For types of proposed actions that are categorically excluded from National Environmental Policy Act (NEPA) requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial (SAMA, conditional, etc.) approval (or the conditional commitment or approval by a grant recipient subject to 24 CFR part 58) of proposed actions in a floodplain.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35) does not exclude those actions from compliance with this part.

§ 55.11 Applicability of subpart C decision making process.

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the grant recipient (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988 and this part apply to the proposed action.

(b) If Executive Order 11988 applies, the approval of a proposed action or initial commitment shall be made in

accordance with this part. The primary purpose of Executive Order 11988 is to "avoid direct or indirect support of floodplain development."

(c) The following table indicates the applicability, by location and type of action, of the decision making process for implementing Executive Order 11988 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment)	Type of proposed location			
	Floodways	Coastal high hazard areas	100-year floodplain outside high hazard area	Area between 100- and 500-year floodplain
Critical actions as defined in §55.2(b)(2).	Critical actions not allowed ...	Critical actions not allowed.	Allowed if the proposed critical action is processed under §55.20[1].	Allowed if the proposed critical action is processed under §55.20[1].
Non-critical actions not excluded under §55.12 (b) or (c).	Allowed only if the proposed action is a functionally dependent use and processed under §55.20[1].	Allowed only if the proposed action: (1) Is either (a) designed for location in a coastal high hazard area or (b) a functionally dependent use; and (2) is processed under §55.20[1].	Allowed if the proposed action is processed under §55.20[1].	Any non-critical action is allowed without processing under this part.

[1] Or those paragraphs of §55.20 that are applicable to an action listed in §55.12(a).

§55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) The decision making steps in §55.20(b), (c) and (g) (steps 2, 3 and 7) shall not apply to the following categories of proposed actions: (1) HUD actions involving the disposition of HUD-acquired multifamily housing projects or "bulk sales" of HUD-acquired one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24).

(2) HUD's actions under section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)) for the purchase or refinancing of existing multifamily housing projects (including hospitals, nursing homes, board and care facilities, and intermediate care facilities) in communities that are in good standing under the NFIP.

(3) HUD mortgage insurance actions for the repair, rehabilitation, modernization or improvement of existing multifamily housing projects (including nursing homes, board and care facilities and intermediate care facilities) and existing one- to four-family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, and the footprint of the structure and paved areas is not significantly increased.

(b) The decision making process in §55.20 shall not apply to the following categories of proposed actions: (1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or coastal high hazard area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under §55.2(b)(9);

(3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted exempt activities described in 24 CFR 58.34;

(2) Policy level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(3) HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701—1720);

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain;

(6) HUD's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, but only if: (i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or modify the 100-year floodplain or the 500-year floodplain (for Critical Actions);

(ii) Appropriate provision is made for site drainage; and

(iii) A covenant or comparable restriction is placed on the property's continued use to preserve the floodplain;

(7) An action for interim assistance, assistance under the section 232(i) Fire Safety Equipment Loan Insurance Program, or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair or restoration activities to control the imminent risk or damage;

(8) HUD's approval of financial assistance for a project on any site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in

accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o);

(10) An action that was, on May 23, 1994, already approved by HUD (or a grant recipient subject to 24 CFR part 58) and is being implemented (unless approval is requested for a new reviewable action), provided that §§ 55.21 and 55.22 apply where the covered transactions under those sections have not yet occurred, and that any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Order 11988 before May 23, 1994 shall be completed;

(11) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (*i.e.*, do not involve site-specific subsidies); and

(12) Secondary mortgage operations of the Government National Mortgage Association (GNMA).

Subpart C—Procedures for Making Determinations on Floodplain Management

§ 55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) *Step 1.* Determine whether the proposed action is located in a 100-year floodplain (or a 500-year floodplain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

(b) *Step 2.* Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

(3) A notice under this paragraph shall state: the name, proposed location and description of the activity; the total number of acres of floodplain involved; and the HUD official and phone number to contact for information. The notice shall indicate the hours and the HUD office at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or the 500-year floodplain for a Critical Action).

(1) The consideration of practicable alternatives to the proposed site or method may include:

(i) Locations outside the floodplain (or 500-year floodplain for a Critical Action);

(ii) Alternative methods to serve the identical project objective; and

(iii) A determination not to approve any action.

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

(d) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain (or 500-year floodplain for a Critical Action).

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

(1) Preparation of and participation in an early warning system;

(2) An emergency evacuation and relocation plan;

(3) Identification of evacuation route(s) out of the 500-year floodplain; and

(4) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain;

(ii) A list of the alternatives considered; and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

(2) In addition, the public notice procedures of § 55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of the proposed action shall be provided.

(h) *Step 8.* Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 Notification of floodplain hazard.

For HUD programs under which a financial transaction for a property located in a floodplain (a 500-year floodplain for a Critical Action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUD's designee, e.g., a mortgagor) or a grant recipient subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

§ 55.22 Conveyance restrictions for the disposition of real property.

(a) In the disposition (including leasing) of properties acquired by HUD that are located in a floodplain (a 500-year floodplain for a Critical Action), the documents used for the conveyance must: (1) Refer to those uses that are restricted under identified federal, state, or local floodplain regulations; and

(2) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.

(b)(1) For disposition of properties acquired by HUD that are located in a 500-year floodplain and contain Critical Actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property owner and successive owners provide

written notification to each current and prospective tenant concerning: (i) The hazards to life and to property for those persons who reside or work in a structure located within the 500-year floodplain, and

(ii) The availability of flood insurance on the contents of their dwelling unit or business.

(2) The notice shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building.

§ 55.23 [Reserved]

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain, and are currently under review by the Department (or by a grant recipient subject to 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decision making process in § 55.20.

§ 55.25 Areawide compliance.

(a) A HUD-approved areawide compliance process may be substituted for individual compliance or aggregated compliance under § 55.24 where a series of individual actions is proposed or contemplated in a pertinent area for HUD's examination of floodplain hazards. In areawide compliances, the area for examination may include a sector of, or the entire, floodplain—as relevant to the proposed or anticipated actions. The areawide compliance process shall be in accord with the decision making process under § 55.20.

(b) The areawide compliance process shall address the relevant executive orders and shall consider local land use planning and development controls (e.g., those enforced by the community for purposes of floodplain management under the National Flood Insurance Program (NFIP)) and applicable state programs for floodplain management. The process shall include the development and publication of a strategy that identifies the range of development and mitigation measures under which the proposed HUD assistance may be approved and that indicates the types of actions that will not be approved in the floodplain.

(c) Individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance do not require further compliance with § 55.20 except that a determination by the Department or a grant recipient subject to 24 CFR part 58 shall be made concerning whether the individual action accords with the areawide strategy. Where the individual action does not accord with the areawide strategy, specific development and mitigation measures shall be prescribed as a condition of HUD's approval of the individual action.

(d) Areawide compliance under the procedures of this section is subject to the following provisions: (1) It shall be initiated by HUD through a formal agreement of understanding with affected local governments concerning mutual responsibilities governing the preparation, issuance, implementation, and enforcement of the areawide strategy;

(2) It may be performed jointly with one or more Federal departments or agencies, or grant recipients subject to 24 CFR part 58 that serve as the responsible Federal official;

(3) It shall establish mechanisms to ensure that: (i) The terms of approval of individual actions (e.g., concerning structures and facilities) will be consistent with the areawide strategy;

(ii) The controls set forth in the areawide strategy are implemented and enforced in a timely manner; and

(iii) Where necessary, mitigation for individual actions will be established as a condition of approval.

(4) An open scoping process (in accordance with 40 CFR 1501.7) shall be used for determining the scope of issues to be addressed and for identifying significant issues related to housing and community development for the floodplain;

(5) Federal, state and local agencies with expertise in floodplain management, flood evacuation preparedness, land use planning and building regulation, or soil and natural resource conservation shall be invited to participate in the scoping process and to provide advice and comments; and

(6) Eligibility for participation in and the use of the areawide compliance must be limited to communities that are in the Regular Program of the National Flood Insurance Program and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), thereby demonstrating a capacity for and commitment to floodplain management standards sufficient to perform responsibilities under this part.

(7) An expiration date (not to exceed ten years from the date of the formal adoption by the local governments) for HUD approval of areawide compliance under this part must be stated in the agreement between the local governments and HUD. In conjunction with the setting of an expiration date, a mechanism for HUD's reevaluation of the appropriateness of areawide compliance must be provided in the agreement.

§ 55.26 Adoption of another agency's review under the executive orders.

If a proposed action covered under this part is already covered in a prior review performed under the executive order by another agency, that review may be adopted by HUD or by a grant recipient authorized under 24 CFR part 58, provided that:

(a) There is no pending litigation relating to the other agency's review for floodplain management;

(b) The adopting agency makes a finding that:

(1) The type of action currently proposed is comparable to the type of action previously reviewed by the other agency; and

(2) There has been no material change in circumstances since the previous review was conducted; and

(c) As a condition of approval, mitigation measures similar to those prescribed in the previous review shall be required of the current proposed action.

§ 55.27 Documentation.

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) shall require that the following actions be documented: (1) Under § 55.20(c), practicable alternative sites have been considered outside the floodplain, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government (as defined in 24 CFR 570.3), whichever geographic area is more appropriate to the proposed HUD action. Actual sites under review must be identified and the reasons for the non-selection of those sites as practicable alternatives must be described; and

(2) Under § 55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain as identified in § 55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with § 55.24, § 55.25, or § 55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for grant recipients subject to 24 CFR part 58).

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT, RENTAL REHABILITATION AND HOUSING DEVELOPMENT GRANT PROGRAMS

4. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 1437o(i)(1) and (2), 3535(d), 4332 and 5304(g).

5. In § 58.5, paragraph (b)(1) is revised to read as follows:

§ 58.5 Related Federal laws and authorities.

* * * * *

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 *et seq.*), as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the Order. (For an explanation of the relationship between the decision making process in 24 CFR part 55 and this part, see § 55.10.)

* * * * *

PART 200—INTRODUCTION

6. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

7. Section 200.926d is amended by revising paragraphs (c)(4)(i) through (iii); by redesignating paragraph (c)(4)(iv) as paragraph (c)(4)(vii); and by adding paragraphs (c)(4)IV, (v) and (vi), to read as follows:

§ 200.926d Construction requirements.

* * * * *

(c) * * *

(4) *Drainage and flood hazard exposure.*—(i) *Residential structures with basements located in FEMA-designated areas of special flood hazard.* The elevation of the lowest floor in structures with basements shall be at or above the base flood level (100-year flood level) required for new construction or substantial improvement of residential structures under regulations for the National Flood Insurance Program (NFIP) (see 44 CFR 60.3 through 60.6), except where variances from this standard are granted by communities under the procedures of the Federal Emergency Management Agency (FEMA) at 44 CFR 60.6(a) or exceptions from this NFIP standard for basements are approved by FEMA in accordance with procedures at 44 CFR 60.6(c).

(ii) *Residential structures without basements located in FEMA-designated areas of special flood hazard.* The elevation of the lowest floor in structures without basements shall be at or above the FEMA-designated base flood elevation (100-year flood level).

(iii) *Residential structures located in FEMA-designated "coastal high hazard areas".* (A) Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited.

(B) Where FEMA has determined the base flood level without establishing stillwater elevations, the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports shall be at or above the base flood level.

(iv) *"Critical Actions" as defined in 24 CFR 55.2(b)(2).* The lowest floor of a structure (including the basement and all mechanical, electrical, and service equipment) shall be at or above the FEMA-designated 500-year frequency flood elevation. "Critical Actions" located in FEMA-designated "floodways" (as defined in 24 CFR 55.2(b)(4)) and "coastal high hazard areas" (as defined in 24 CFR 55.2(b)(1)) are prohibited.

(v) *Streets.* Streets must be usable during runoff equivalent to a 10-year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10-year return frequency from ponding over 6 inches deep, streets must be made passable for commonly used emergency vehicles during runoff equivalent to a 25-year return frequency, except where an alternative access street not subject to such ponding is available.

(vi) *Crawl spaces.* Crawl spaces must not pond water or be subject to prolonged dampness.

* * * * *

Dated: April 14, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–9606 Filed 4–20–94; 8:45 am]

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April 21, 1994

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Type Certificates for Surplus Aircraft of the Armed Forces; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 27699; Notice No. 94–12]

RIN 2120–AE41

Type Certificates for Surplus Aircraft of the Armed Forces

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to remove the regulations for issuing type certificates for surplus aircraft of the Armed Forces. The purpose of the proposed removal is to eliminate references to obsolete airworthiness standards that are no longer appropriate for type certification of surplus military aircraft. Surplus aircraft of the Armed Forces may still be certificated in the normal, utility, acrobatic, commuter, transport, and restricted categories when compliance with the applicable regulations is shown. This proposal if adopted as final would become effective on April 21, 1994 and is intended to provide a greater level of assurance that the appropriate airworthiness standards are met before standard airworthiness certificates are issued for surplus military aircraft.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27699, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket, room 915–G, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: George Kaseote, Aircraft Engineering Division (AIR–100), Policy and Procedures Branch, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8541.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on any portion of this rule by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Anyone wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27699." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing dates for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA–430), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The practice of issuing type certificates and airworthiness certificates for surplus aircraft of the Armed Forces became effective on November 21, 1946, with the adoption of Civil Air Regulation (CAR) Part 09 (later changed to Part 9), Aircraft Airworthiness, Limited Category. The promulgation of that rule occurred when there was a substantial number of surplus military airplanes being offered for sale to the public, accompanied by an increasing need for aircraft in civil use, but at a time when the civil aircraft industry was not capable of meeting those needs. CAR Part 9 permitted airworthiness certification of surplus military aircraft in the limited category only if the Administrator found that the aircraft's service history was satisfactory, the particular aircraft was in a good state of preservation and repair, and the aircraft was in a condition for safe operation. The carriage of cargo or passengers for hire was not permitted in these aircraft.

Because CAR Part 9 was based on conditions in the aviation industry in 1946 which were believed to be of a temporary nature, the regulations required that type certificate applications had to be made prior to December 31, 1947, and that no airworthiness certificates were to be issued after August 31, 1948. Those time limits were established so that the development of postwar civilian-type aircraft would not be stifled by an extended overloading of the market with surplus war aircraft. The August 31, 1948 time limit for the issuance of airworthiness certificates was removed on November 20, 1950, as a consequence of the increased demand for military-type aircraft (Korean War), with the resultant conversion of civilian aircraft manufacturing facilities to the production of military-type aircraft, and an increased demand for war surplus aircraft that could be used as executive-type transports.

Part 9 was amended on January 10, 1964, to reimpose a time limit for the issuance of airworthiness certificates in the limited category. The new time limit for issuance of "original" airworthiness certificates was June 30, 1965. That time limit was subsequently rescinded indefinitely on July 23, 1965, due to the interest of individuals and groups in surplus military aircraft (Warbirds) preservation. The term "original" airworthiness certificates was necessary because an aircraft that had a Limited airworthiness certificate could be issued another kind of airworthiness certificate ("experimental" or "restricted") and then be re-issued a limited airworthiness certificate.

Still, surplus military aircraft for which an application for a type certificate was made after 1947 were no longer eligible for certification under CAR Part 9. A purchaser of one of those aircraft was confronted with the fact that the only way to certificate the aircraft was in the normal, utility, acrobatic, and transport categories in accordance with the provisions of CAR Parts 3, 4b, 6 or 7, or in the restricted category under the provisions of CAR Part for special purpose operations only. The provisions of those parts prescribe that compliance be shown with the requirements of those parts effective on the date of application for the type certificate. Since the regulations are amended as the state of the art progresses in the aviation industry, demonstration of compliance with many of the current airworthiness requirements by an aircraft which was designed many years previously could

be prohibitively burdensome and costly. As a consequence, CAR Part 9a was adopted effective January 10, 1964. This allowed military aircraft to be certificated in the normal, utility, acrobatic, and transport categories if the aircraft was found to conform *not* to the certification requirements in effect on the date of application for a type certificate, but to specified earlier versions of CAR Parts 3, 4b, 6, or 7. Under CAR Part 9a, aircraft that were military models of previously type certificated civil aircraft could be certificated upon compliance with the regulations governing the original type certificate. These aircraft were eligible to conduct the same type of operations as other civil aircraft for which a standard type of airworthiness certificate had been issued; for example, they could be used to carry cargo and passengers for hire. CAR Part 9a made no mention of limited category aircraft. When the CAR was recodified in 1965, § 21.27 replaced CAR Part 9A.

FAR Section 21.27 allows compliance with the applicable certification requirements of either the CAR or FAR that was appropriate on the date the aircraft was accepted for operational use by the Armed Forces of the United States. Since § 21.27 was first adopted, changes have been made to the FAR to upgrade the level of safety required for civilian aircraft and to incorporate certification standards for modern state-of-the-art technology. Consequently, the CAR's are obsolete and no longer appropriate as certification standards for the issuance of new type certificates for modern aircraft.

Discussion

This proposed rulemaking is intended to remove § 21.27, "Issue of type certificate: surplus aircraft of the Armed Forces." This action would not preclude a surplus military aircraft of the Armed Forces from being type certificated under the provisions of § 21.21, "Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; special classes of aircraft; aircraft engines; propellers," or § 21.25, "Issue of type certificate: Restricted category aircraft."

Currently, to obtain a type certificate for an aircraft under § 21.21, an applicant must apply for the certificate and submit descriptive data, substantiating data, and test results that show compliance with the appropriate regulations governing the type of certificate for which he or she is applying, i.e., normal, utility, acrobatic, commuter, or transport. The FAA then evaluates that data and may conduct additional testing. After all data are submitted and tests are completed, and if the results show compliance with the regulations, then a type certificate is issued. This practice assures that the aircraft is thoroughly evaluated and meets the appropriate safety standards. On the other hand, § 21.27 is less stringent and allows a greater degree of flexibility in the application of the rules. It provides for relief from strict compliance with specific provisions of the applicable requirements if the alternative method of compliance proposed by the applicant provides substantially the same level of airworthiness and if a severe burden would otherwise be incurred. Since military aircraft have become increasingly complex and sophisticated, the practice of allowing normal or transport category certification under § 21.27 (relief from strict compliance) is no longer acceptable for military surplus aircraft. It is the FAA's position that surplus military aircraft should be certificated only under the provisions of § 21.21 or § 21.25.

Accordingly, the FAA has determined that § 21.27 has outlived its intent and usefulness. Since § 21.27 does not provide an adequate level of certitude that the appropriate airworthiness standards have been met for the different categories of airworthiness certification, the FAA is proposing that it be removed, effective April 21, 1994. The FAA specifically request comments on the proposed effective date for the removal of § 21.27. Also, the proposed removal of § 21.27 from the FAR affects § 21.21. That section would be revised to accommodate the removal of § 21.27. Aircraft that have existing type certificates and those that have applications for type certificates based on § 21.27 dated as of April 21, 1994 would not be affected. Also, aircraft in the limited category would not be affected by this rulemaking action.

Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Would generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not "significant" as defined in DOT's Regulatory policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs and Benefits

A. Costs

The incremental costs of the proposed rule would consist of the difference between the costs to certificate aircraft under FAR § 21.21 or § 21.25 as opposed to those under § 21.27. As a basis for evaluating this differential, the FAA examined certification records for the past 10 years. This examination revealed that only one type certification was completed by the FAA pursuant to § 21.27 (in 1983). The costs expended by the applicant to certify the military transport airplane under § 21.27 essentially equaled the costs typically incurred for certification under § 21.21 or § 21.25. If this experience were to continue, the proposed rule would impose no incremental costs.

The FAA recognizes the potential for increased type certification applications for surplus military aircraft in the future, due to possible downsizing of the nation's investment in military equipment and other factors. However, future applications may not increase to any great extent despite the potential downsizing of the military. The substantial surplus of military aircraft following World War II and the Korean War occurred at a time when the civilian aircraft industry was not capable of meeting the increased need for civilian aircraft. Industrial capacity had been shifted to military production in a relatively short time period. However, the military buildup of the 1980's occurred over a longer period of time and did not significantly affect the nation's capacity to produce civilian aircraft. Consequently, future type certifications of surplus military aircraft may not approach the levels reached following World War II and the Korean war. Nevertheless, the FAA is unable to reasonably forecast the future number of type certifications of surplus military aircraft and the potential variability in costs from case to case. Therefore, the FAA invites interested persons to submit such estimates during the public

comment period specified in this NPRM.

B. Benefits

The benefits of this proposed rule would be the accident risk differential between aircraft certificated to the more stringent standards of §§ 21.21 and 21.25 as compared to the standards of § 21.27. While the FAA is not aware of any surplus military aircraft that has experienced certification-related safety problems, it believes that continued certification to the less stringent requirements of § 21.27 is unacceptable. Based on the continuance of negligible incremental costs to certificate aircraft under §§ 21.21 and 21.25, the benefits associated with the prevention of only one accident would easily make this proposed rule cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA's procedures and criteria for implementing the RFA.

The small entities potentially affected by the proposed rule are operators that own 9 or few aircraft, which is the size threshold for aircraft operators. The cost thresholds (in 1993 dollars) are approximately $119,500 for scheduled operators whose entire fleets have a seating capacity of over 60; $66,800 for other scheduled operators; and $4,700 for unscheduled operators. A substantial number of small entities is a number which is not less than 11 and which is more than one-third of the small entities subject to the rule. Given the historically small number of applications for certification under § 21.27 and the finding of no incremental costs incurred by operators certificating surplus military aircraft under § 21.21 or § 21.25 compared to certification under § 21.27, the FAA does not expect that 11 or more entities would experience a significant economic impact in any one year. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services to the United States. This assessment is based on the finding of no incremental costs as well as the small number of applications for type certification pursuant to § 21.27.

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 12866, it is determined that this proposal would not have sufficient federalism implications to warrant the 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 proposed regulation in not major under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, 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 proposal is considered not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation of the proposal, including an initial Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 21 of the Federal Aviation Regulations (14 CFR part 21) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 49 U.S.C. App. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 7572; E.O. 11514, 35 FR 4247, 3 CFR 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 21.21 is revised to read as follows:

§ 21.21 Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; special classes of aircraft; aircraft engines; and propellers.

An applicant is entitled to a type certificate for an aircraft in the normal, utility, acrobatic, commuter, or transport category, or for a manned free balloon, special class of aircraft, or an aircraft engine or propeller, if the applicant submits the type design, test reports, and computations necessary to show that the product to be certificated meets the applicable airworthiness, aircraft noise, fuel venting, and exhaust emission requirements of the Federal Aviation Regulations and any special conditions prescribed by the Administrator, and the Administrator finds—

(a) Upon examination of the type design, and after completing all tests and inspections, that the type design and the product meet the applicable aircraft noise, fuel venting, and emissions requirements of the Federal Aviation Regulations, and further finds that they meet the applicable airworthiness requirements of the Federal Aviation Regulations or that any airworthiness provisions not complied with are compensated for by factors that provide an equivalent level of safety; and

(b) For an aircraft, that no feature or characteristic makes it unsafe for the category in which certification is requested.

§ 21.27 [Removed]

3. Section 21.27 is removed and reserved.

Issued in Washington, DC, on April 11, 1994.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 94–9563 Filed 4–20–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
April 21, 1994

Part VIII

Federal Communications Commission

47 CFR Part 64
Customer Proprietary Network Information Requirements; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Dockets No. 90–623 and 92–256; FCC 94–63]

Customer Proprietary Network Information Requirements

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: The Commission has in place rules that govern the Bell Operating Companies (BOCs) and GTE Corporation's use of customer proprietary network information (CPNI) in marketing enhanced services and customer premises equipment (CPE). The Commission seeks comment on customers' CPNI related privacy expectations, and whether any changes in the rules are required to balance customers privacy interests, competitive equity and efficiency. The Commission seeks comment on whether the CPNI rules should apply to local exchange carriers other than GTE and the BOCs and whether any changes in the CPNI requirements recommends by parties should also apply to the provision of CPE.

COMMENT DATES: Comments due by April 11, 1994,[1] reply comments by May 2, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Policy and Program Planning Division, Common Carrier Bureau (202) 632–1292.

SUPPLEMENTARY INFORMATION:

Released: March 10, 1994.

Customer proprietary network information, or CPNI, encompasses any information about customers' network services and their use of those services that a telephone company possesses because it provides those network services.[1] The Commission has in place rules that govern the Bell Operating Companies' (BOCs) use of CPNI in marketing enhanced services and customer premises equipment (CPE). These CPNI rules for enhanced services are the subject of reconsideration petitions in the Computer III Remand Order proceeding, CC Docket No. 90–623. In this public notice, we seek comment on customers' CPNI-related privacy expectations, and whether any changes in our rules are required to achieve the best balance between customer's privacy interests, competitive equity, and efficiency.

Under the current rules, any customer can request that its CPNI be withheld from the BOCs' enhanced services and CPE marketing personnel, although such personnel are generally allowed to make use of CPNI without prior customer authorization. Prior authorization is required only before BOC enhanced services marketing personnel are given access to the CPNI of customers with more than twenty lines. Third parties, such as independent enhanced services providers, must obtain advance authorization from the customer in order to obtain access to CPNI. The Commission's rules also require that the BOCs provide an annual written notice of CPNI rights to multiline business customers.[2] At present these rules do not apply to independent telephone companies, but the Commission has decided to apply them to GTE in its provision of enhanced services.[3]

The CPNI rules, developed and refined over a period of several years, are designed to balance considerations of customer privacy, efficiency, and competitive equity. In the past, the Commission has concluded that customers' expectations of privacy could be met without a notification obligation or a prior authorization requirement for internal BOC use of residential and small business customers' CPNI.[4] In the most recent order addressing CPNI, the Commission concluded that a prior authorization rule would as a practical matter deny to all but the largest business customers the one-stop-shopping benefits of integrated marketing of basic and enhanced services by BOCs.[5] The Commission also concluded that to the extent that access to CPNI is limited to employees of a single integrated company, this did not generally raise significant privacy concerns.[6] The Commission reaffirmed that, although privacy issues are raised by disclosure of CPNI to third parties outside the BOC, the CPNI rules have always protected against such disclosure.[7]

In recent months, however, local telephone companies have planned and entered into a number of alliances, acquisitions, and mergers with non-telephone company partners. In this changing environment, access to CPNI among affiliated companies may raise additional privacy concerns. In recognition of these changes, we now seek further comment from the public on whether the existing CPNI safeguards will continue in the future to strike the best balance between customers' privacy interests, competitive equity, and efficiency. In assessing the CPNI rules that best achieve this balance, parties should comment specifically on the issue of residential and small business customers' CPNI-related privacy expectations, and on whether the rules should apply to LECs other than the BOCs and GTE. In addition, parties recommending a change in the CPNI rules governing the provision of enhanced services should discuss whether their proposed rules should also apply to the provision of CPE.

Interested parties are to file comments by April 11, 1994 and reply comments by May 2, 1994 with the Secretary, FCC, 1919 M Street, NW., Washington, DC 20554. A copy should also be sent to Rose M. Crellin, Common Carrier Bureau, FCC, room 544, 1919 M Street, NW., Washington, DC 20554, and to the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037.

For further information, contact Rose M. Crellin, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632–1292).

Action by the Commission on March 9, 1994.

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[1] **Note:** See extension of time published elsewhere in this issue.

[1] See Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1, 215 (1988) (54 FR 3453, Jan. 24, 1989).

[2] See *Computer III* Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90–623, 6 FCC Rcd 7571, 7605–14 (1991) (57 FR 4373, Feb. 5, 1992) (*Computer III Remand Order*); Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, CC Docket No. 86–79, 2 FCC Rcd 143, 152–153 (1987) (52 FR 2226, Jan. 21, 1987).

[3] In the Matter of Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, Report and Order, CC Docket No. 92–256 (adopted March 8, 1994).

[4] See *e.g.*, Amendment of Section 64.502 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85–229, 2 FCC Rcd 3035, ¶ 164 (1987) (52 Rule 21954, June 10, 1987) (notification requirement limited to multiline business customers); see also *Computer III Remand Order* 6 FCC Rcd 7571, n. 159 (1991) (57 FR 4373, Feb. 5, 1992) (prior authorization required for customers with more than twenty lines; more extensive prior authorization requirement found not necessary to protect customers' privacy interests).

[5] *Computer III Remand Order* at 7610 and n.155.

[6] The Commission's CPNI rules allow the BOCs to provide CPE and enhanced services under various forms of business organization. BOCs may utilize customer CPNI to jointly market enhanced services and CPE with these forms of business organization, consistent with other requirements of the Commission's CPE, ONA, and CPNI rules. *Computer III Phase I Further Reconsideration Order*, 3 FCC Rcd 1135, 1139 (1988) at para. 33 (53 FR 8630, Mar. 16, 1988).

[7] *Id.* at 7612, n.159.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–9692 Filed 4–20–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Dockets No. 90–623 and 92–256; DA 94–331]

Customer Proprietary Network Information Requirements

AGENCY: Federal Communications Commission.

ACTION: Extension of time for comments.

SUMMARY: This order provides an extension of time so that parties have ample time to file comments and reply comments in response to the Commission's Public Notice, FCC 94–63, released March 10, 1994. The Public Notice seeks comment on the Commission's rules that govern the Bell Operating Companies (BOCs) and GTE Corporation's (GTE) use of customer proprietary network information (CPNI) in marketing enhanced services and customer premises equipment (CPE). In the public notice the Commission seeks comment on whether any changes in the rules are required to balance customers privacy interests, competitive equity and efficiency, whether the CPNI rules should apply to local exchange carriers other than GTE and the BOCs, and whether any changes in the CPNI requirements recommended by parties should also apply to the provision of CPE.

COMMENT DATES: The dates for filing comments and reply comments are May 5, 1994 and May 19, 1994, respectively.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Policy and Program Planning Division, Common Carrier Bureau (202) 632–1292.

SUPPLEMENTARY INFORMATION:

Computer III Remand Proceeding: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards

Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation; Order

[CC Docket No. 90–623; CC Docket No. 92–256]

Adopted: April 13, 1994.

Released: April 14, 1994.

By the Chief, Policy and Program Planning Division, Common Carrier Bureau:

1. On March 10, 1994, the Commission released a public notice seeking additional comment on rules governing telephone companies' use of customer proprietary network information (CPNI).[1] The notice sought comment on the CPNI privacy expectations of residential and small business customers. The notice also sought comment on whether the Commission's rules, which currently apply only to the Bell Operating Companies (BOCs) and GTE Corporation (GTE), should apply to other local exchange carriers. Finally, the Commission asked that parties recommending a change in the CPNI rules discuss whether their proposed rules should apply to the provision of customer premises equipment (CPE).

2. The notice required parties to file comments by April 11, 1994, and reply comments by May 2, 1994. In this order, on our own motion, we extend the filing deadlines for parties to respond to the public notice. Interested parties are to file comments by May 5, 1994[2] and reply comments by May 19, 1994 with the Secretary, FCC, 1919 M Street NW., Washington, DC 20054. A copy should also be sent to Rose M. Crellin, Common Carrier Bureau, FCC, room 544, 1919 M Street, NW., Washington, DC 20554, and to the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington DC 20037.

Federal Communications Commission.

James D. Schlichting,

Chief, Policy and Program Planning Division, Common Carrier Bureau.

[FR Doc. 94–9693 Filed 4–20–94; 8:45 am]

BILLING CODE 6712–01–M

[1] Public Notice, CC Dockets No. 90–623 and 92–256, FCC 94–63, released March 10, 1994.

[2] Comments received in response to the April 11, 1994 comment date in the notice will be considered as filed in this proceeding. Parties do not have to refile those comments.

federal register

Thursday
April 21, 1994

Part IX

The President

Proclamation 6674—National Youth Service Day, 1994 and 1995

Federal Register
Vol. 59, No. 77
Thursday, April 21, 1994

Presidential Documents

Title 3—

The President

Proclamation 6674 of April 19, 1994

National Youth Service Day, 1994 and 1995

By the President of the United States of America

A Proclamation

On September 21, 1993, I had the great pleasure of signing into law a new national service program, using the same pen that John F. Kennedy used to create the Peace Corps. That event was particularly meaningful to me because so many of my own dreams about national service began when President Kennedy challenged my generation to ask what we could do for our country—and thousands responded as Peace Corps volunteers.

Thirty years later, a new generation of young Americans is not waiting to be asked. All along the presidential campaign trail, young people told me again and again what they wanted most—the opportunity to make a difference. So we created AmeriCorps, a new national service program. Now, the real work of rebuilding America must begin.

This year, 20,000 young AmeriCorps members will provide hands-on community-based service to meet our Nation's urgent needs—in education, in public safety, in health care reform, and in the environment. In exchange for a commitment to service, AmeriCorps members will receive many benefits. They will get education awards to help them pay off student loans and finance further education. They will have an experience that will change their lives forever. But the most important benefit of national service will be seen in the accomplishments of the participants in the communities they serve. With young people at the vanguard, AmeriCorps can help to bring the American people back together with a sense of working toward a common purpose.

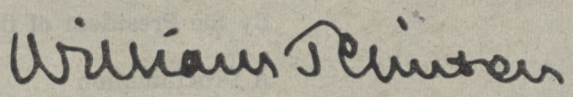
I know that it can be done. Last summer, we launched a pilot service program to see if AmeriCorps could really work to strengthen communities. As a result of our Summer of Service program, 87 participants in Texas helped to immunize over 100,000 children. Fifty participants in New York City operated summer day school programs at the Harlem Freedom Schools for 643 at-risk youths. And 74 participants through Boston's City Year program provided educational, health, and environmental services that reached more than 14,200 individuals. If national service participants can have that kind of impact in 8 weeks, just imagine what they can accomplish in a year—or two—of service to their communities.

In the youth of America lies our hope for the future. Throughout our history, our young men and women have challenged us to reach for goals that seemed beyond our grasp, to reach for an understanding between all people of good will.

The Congress, by Public Law 103–82, has designated April 19, 1994, and April 18, 1995, as "National Youth Service Day" and has authorized and requested the President to issue a proclamation in observance of these days.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 19, 1994, and April 18, 1995, as National Youth Service Day. I urge every American to observe these days with appropriate programs, ceremonies, and activities in honor of volunteers and in recognition of their extraordinary contributions to America.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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.



[FR Doc. 94–9885
Filed 4–20–94; 11:33 am]
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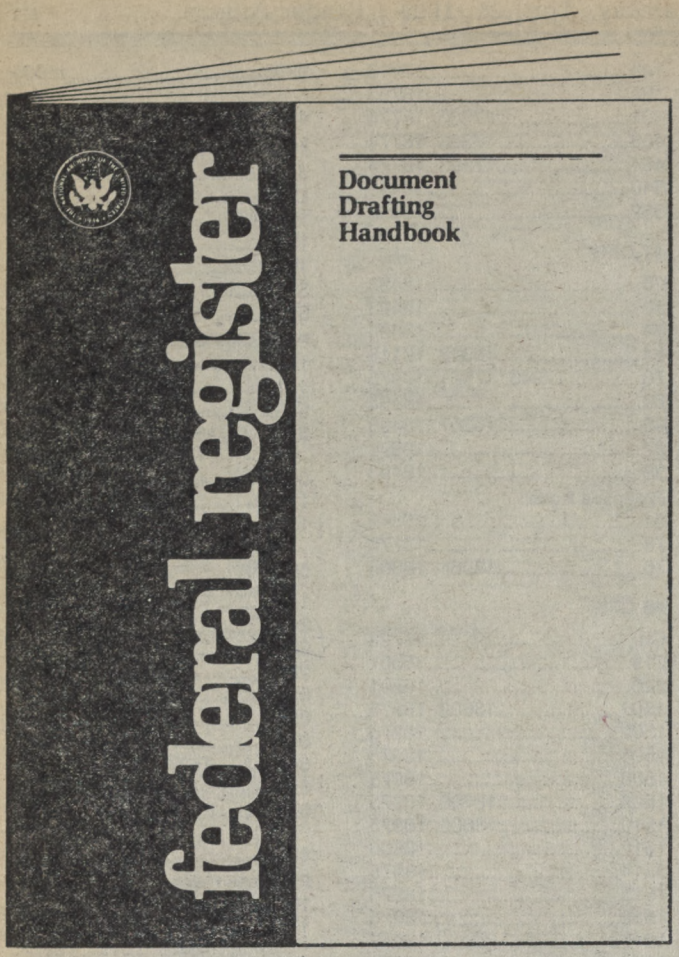

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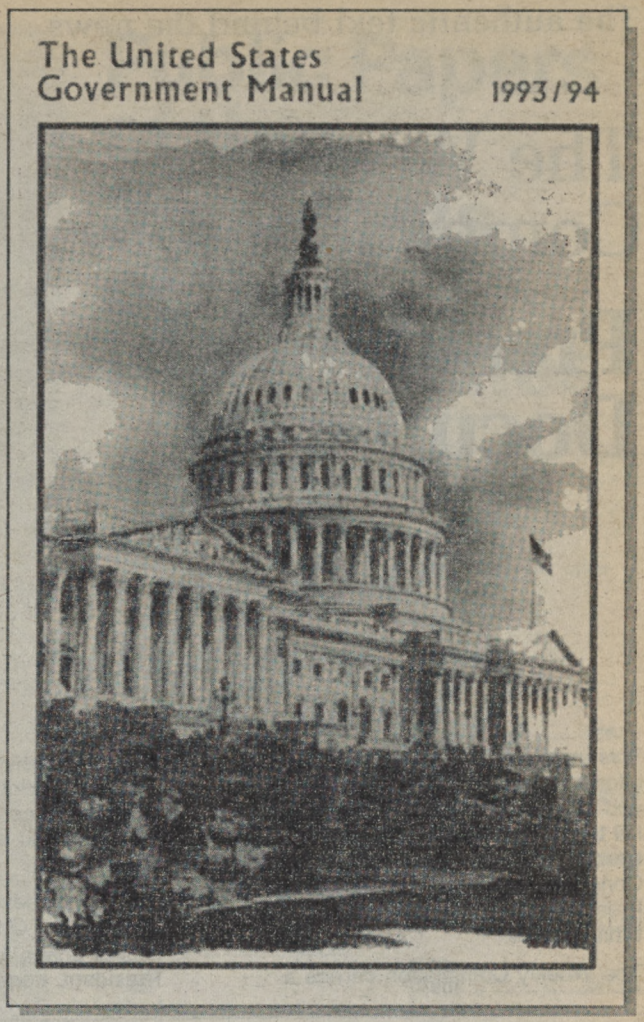

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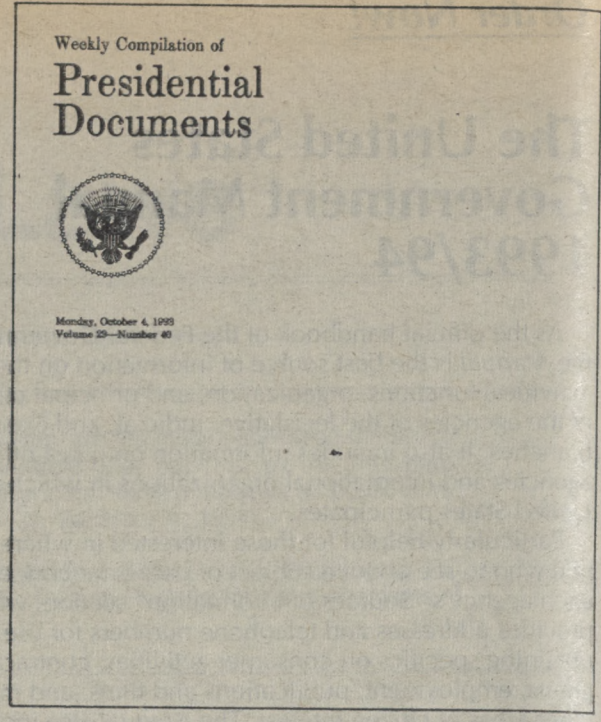

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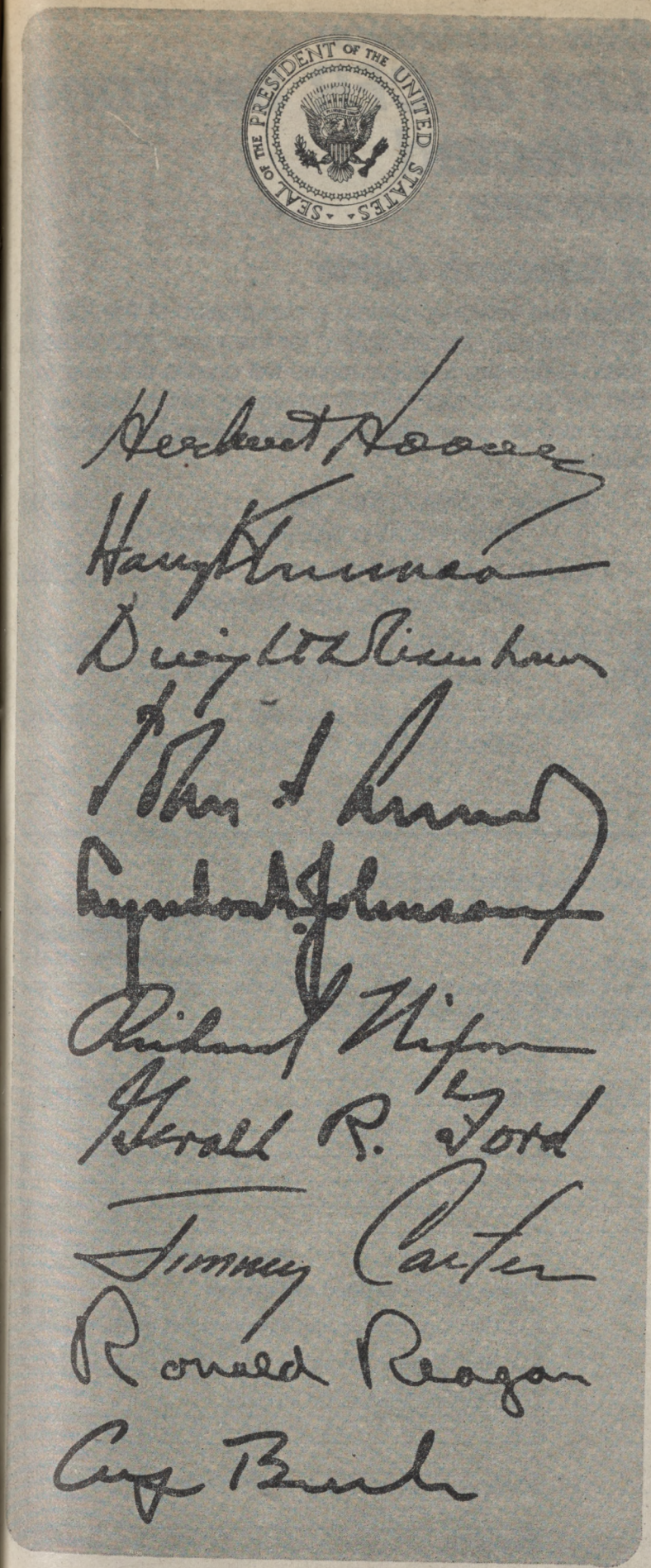

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