6-12-91
Vol. 56 No. 113

federal register

Wednesday
June 12, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

6-12-91
Vol. 56 No. 113
Pages 26895-27188

federal register

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

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WHERE: Federal Building, 501 Magazine St. Conference Room 1120, New Orleans, LA
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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 91-069]

Commuted Traveltime Periods, Louisiana; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correction of final rule.

SUMMARY: We are correcting an error that appeared in a final rule published in the **Federal Register** and effective on March 18, 1991 (56 FR 11349–11350, Docket Number 90–254). The final rule amended the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing and adding commuted traveltime allowances for travel between various locations in Arkansas, Kansas, Louisiana, Missouri, and Texas. In FR Doc. 91–6380, page 11350, first column, the first entry under Louisiana was inadvertently partially omitted and should be corrected to read "Barksdale AFB, Shreveport" in the "Location covered" column, "Natchitoches" in the "Served from" column, and "3½" in the "Metropolitan Area—Outside" column.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7764.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, 7 CFR part 354 is corrected as follows:

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

2. In the table in § 354.2, the first entry under Louisiana is corrected to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

(In hours)

Location covered	Served from—	Metropolitan area	
		Within	Outside
Remove:			
Louisiana:			
•	•	•	•
Barksdale AFB, Shreveport	Natchitoches		3½
•	•	•	•

Done in Washington, DC, this 6th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–13965 Filed 6–11–91; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Parts 948, 953, and 958

[Docket No. FV–91–281]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 948, 953, and 958 for the 1991–92 fiscal period. Authorization of these budgets will permit the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), the Southeastern Potato Committee, and the Idaho-Eastern Oregon Onion Committee (committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: June 1, 1991, through May 31, 1992 (§ 953.248) and July 1, 1991, through June 30, 1992 (§ 948.206 and § 958.235).

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 97 and Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, Marketing Agreement No. 104 and Order No. 953 (7 CFR part 953), both as amended, regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina), and Marketing Agreement No. 130 and Order No. 958 (7 CFR part 958), both as amended, regulating the handling of onions grown in designated counties of

Idaho and Malheur County, Oregon. 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.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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 the 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 18 handlers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 95 potato producers. There are approximately 60 handlers of Southeastern potatoes under Marketing Order No. 953, and approximately 150 potato producers. Also, there are approximately 35 handlers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 450 onion producers. Small agricultural producers have been defined by the Small BusinessAdministration (13 CFR 121.2) 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 producers and handlers may be classified as small entities.

The budgets of expenses for the 1991–92 fiscal period were prepared by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), the Southeastern Potato Committee, and the Idaho-Eastern Oregon Onion Committee, the agencies responsible for local administration of the orders, and submitted to the Department of Agriculture for approval. The members of these committees are handlers and producers of Colorado potatoes, Southeastern potatoes, and Idaho-Oregon onions. They are familiar with the committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the committees were derived by dividing anticipated expenses by expected shipments of potatoes and onions. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the committees' expenses.

The Colorado Potato Administrative committee, Northern Colorado Office (Area 3) met on April 11, 1991, and unanimously recommended a 1991–92 budget of $4,335, about the same as last year's budget. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 85 percent is paid under the State and 15 percent under the Federal order. All promotion and advertising expenses are financed under the State order.

The 1991–92 recommended assessment of $0.0025 per hundredweight of potatoes is a decrease from last year's $0.005 rate. This rate, when applied to anticipated fresh market shipments of 826,500 hundredweight, will yield $2,066 in assessment revenue. Additional money to be received from the Federal-State Inspection Service for rent ($360) and income from interest ($450), plus $1,459 from the reserves, will result in total revenues of $4,335 which will be adequate to cover budgeted expenses, Funds at the beginning of the 1991–92 fiscal period, estimated at $7,276, will be within the maximum permitted by the order of two fiscal periods' expenses.

The Southeastern Potato Committee met on April 18, 1991, and unanimously recommended a 1991–92 budget of $11,000, the same as last year. Major expense items include committee staff salaries and travel expenses. The committee also unanimously recommended an assessment rate of $0.0025 per hundredweight, a decrease from last season's rate of $0.0075. Production for the 1991–92 season could not be estimated at this time. However, the $21,000 reserve will be adequate to cover the expenses incurred. Given the assessment rate decrease, funds remaining at the end of the 1991–92 fiscal period should be within the maximum permitted by the order of one fiscal period's expenses.

The Idaho-Eastern Onion Committee met on April 9, 1991, and unanimously recommended a 1991–92 budget of $891,565, $58,351 more than the previous year. Increases in office salaries, promotion and advertising, car rental, and capital improvements would be partially offset by decreases in contingency and research expenses. The committee also unanimously recommended an assessment rate of $0.12 per hundredweight, an increase from last season's rate of $0.11. This rate, when applied to anticipated fresh market shipments of 7,200,000 hundredweight, will yield $864,000. This, along with $25,000 in interest income and $2,565 from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds at the beginning of the 1991–92 fiscal period, estimated at $331,188, will be within the maximum permitted by the order of one fiscal period'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 will be offset by the benefits derived from the operation of the marketing orders. 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.

A proposed rule was published in the **Federal Register** on May 20, 1991 (56 FR 23031). That document contained a proposal to add § 948.206, § 953.235, and § 958.235 to authorize expenses and establish assessment rates for the committees. That rule provided that interested persons could file comments through May 30, 1991. No comments were received.

It is found that the specified expenses 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 section 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 1991–92 fiscal period for the Southeastern Potato Committee began on June 1, and the 1991–92 fiscal period for the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3) and the Idaho-Eastern Oregon Onion Committee begins on July 1, and the marketing orders require that the rates of assessment for the fiscal period apply to all assessable potatoes and onions

handled during the fiscal period. In addition, handlers are aware of these actions which were recommended by the committees at public meetings.

List of Subjects in 7 CFR Parts 948, 953, and 958

Marketing agreements, Onions, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 948, 953, and 958 are hereby amended as follows:

1. The authority citation for 7 CFR parts 948, 953, and 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 948—IRISH POTATOES GROWN IN COLORADO

2. A new § 948.206 is added to read as follows:

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

§ 948.206 Expenses and assessment rate.

Expenses of $4,335 by the Colorado Potato Administrative Committee, Northern Colorado office (Area 3) are authorized, and an assessment rate of $0.0025 per hundredweight of potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

3. A new § 953.248 is added to read as follows:

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

§ 953.248 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato committee are authorized, and an assessment rate of $0.002s per hundredweight of potatoes is established for the fiscal period ending May 31, 1992. Unexpended funds may be carried over as a reserve.

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

4. A new § 958.235 is added to read as follows:

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

§ 958.235 Expenses and assessment rate.

Expenses of $891,565 are authorized, and an assessment rate of $0.12 per hundredweight of onions is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: June 6, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–13964 Filed 6–11–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 209

[INS No. 1426–91]

Adjustment Procedures for Aliens Granted Asylum

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is being published by the Immigration and Naturalization Service to implement section 104 of the Immigration Act of 1990, Public Law 101–649, (November 29, 1990), which amended procedures to be used in filing for adjustment to lawful permanent resident status under section 209(b) of the Immigration and Nationality Act, as amended by the Refugee Act of 1980. This rule establishes the availability of adjustment without numerical restriction for certain asylee adjustment applicants, the increase from 5,000 to 10,000 of the annual limitation on asylee adjustments, and that certain asylees may be able to adjust to permanent resident status even though they are no longer refugees due to a change in circumstances in their country of origin.

DATES: This interim rule is effective July 12, 1991. Written comments must be submitted on or before July 29, 1991.

ADDRESSES: Please submit comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Records Systems Division, Immigration and Naturalization Service, 425 Eye Street NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1426–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Marilyn Lee, Senior Supervisory Asylum Officer, Immigration and Naturalization Service, 425 Eye Street NW., room 1203, Washington, DC 20536, telephone (202) 514–5498.

SUPPLEMENTARY INFORMATION: Section 104 of the Immigration Act of 1990 includes a provision increasing the number of asylee adjustments to lawful permanent resident status allowed each year under section 209(b) of the Immigration and Nationality Act from 5,000 to 10,000. The law also provides for the adjustment of certain aliens who have been granted asylum, but whose country conditions have changed so that they no longer continue to be a refugee, as that term is defined in section 101(a)(42) of the Immigration and Nationality Act and who were or would be qualified for adjustment as of November 28, 1990, but for the requirements of one year of physical presence and that the alien continues to be a refugee or a spouse or child of such refugee. These aliens may be adjusted and are exempt from the numerical limitations of section 209(b) of that Act, provided they were granted asylum prior to November 29, 1990. Section 104 of the Immigration Act of 1990 also exempts from numerical limitation all asylees who filed for adjustment prior to June 1, 1990.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and the necessity for immediate implementation of this interim rule is to carry out the provisions of section 104 of the Immigration Act of 1990, Public Law 101–649, which became effective November 29, 1990. This will allow qualifying aliens who were granted asylum to be adjusted to lawful permanent resident status upon publication of the interim rule. Comments will be fully considered and required changes will be incorporated into the final rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will 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) E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for the information collections contained in this rule is OMB Control No. 1115–0086. Modifications to this information collection have been forwarded to the Office of Management and Budget for their review and clearance.

List of Subjects in 8 CFR Part 209

Administrative practice and procedure, Aliens, Asylum, Immigration, Refugees, Reporting and recordkeeping requirements.

Accordingly, part 209 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

1. The authority citation for part 209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, and 1159.

2. Section 209.2 is amended by:

a. Adding introductory text;

b. Revising paragraph (a);

c. Removing, in paragraph (b), in the last sentence, the term "became" and adding the term "is";

d. Removing, in paragraph (c), in the first sentence, the phrase "without fee";

e. Revising, in paragraph (c), the third and fourth sentences; and

f. Revising, in paragraph (f), the last sentence to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

The provisions of this section shall be the sole and exclusive procedure for adjustment of status by an asylee admitted under section 208 of the Act whose application is based on his or her asylee status.

(a) *Eligibility.* (1) Except as provided in paragraph (a)(2) of this section, the status of any alien who has been granted asylum in the United States may be adjusted by the district director to that of an alien lawfully admitted for permanent residence, provided the alien:

(i) Applies for such adjustment;

(ii) Has been physically present in the United States for at least one year after having been granted asylum;

(iii) Continues to be a refugee within the meaning of section 101(a)(42) of the Act, or is the spouse or child of a refugee;

(iv) Has not been firmly resettled in any foreign country; and

(v) Is admissible to the United States as an immigrant under the Act at the time of examination for adjustment without regard to paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Act, and (vi) has a refugee number available under section 207(a) of the Act.

If the application for adjustment filed under this part exceeds the refugee numbers available under section 207(a) of the Act for the fiscal year, a waiting list will be established on a priority basis by the date the application was properly filed.

(2) An alien, who was granted asylum in the United States prior to November 29, 1990 (regardless of whether or not such asylum has been terminated under section 208(b) of the Act), and is no longer a refugee due to a change in circumstances in the foreign state where he or she feared persecution, may also have his or her status adjusted by the district director to that of an alien lawfully admitted for permanent residence even if he or she is no longer able to demonstrate that he or she continues to be a refugee within the meaning of section 10l(a)(42) of the Act, or to be a spouse or child of such a refugee or to have been physically present in the United States for at least one year after being granted asylum, so long as he or she is able to meet the requirements noted in paragraphs (a)(1)(i), (iv), and (v) of this section. Such persons are exempt from the numerical limitations of section 209(b) of the Act. However, the number of aliens who are natives of any foreign state who may adjust status pursuant to this paragraph in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Act and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of the Act. Aliens who applied for adjustment of status under section 209(b) of the Act before June 1, 1990, are also exempt from its numerical limitation without any restrictions.

* * * * *

(c) *Application.*

* * * * *

Except as provided in paragraph (a)(2) of this section, the application must also be supported by evidence that the applicant has been physically present in the United States for at least one year. If an alien has been served with an order to show cause or placed under exclusion proceedings, the application can be filed and considered only in proceedings under section 242 or 236 of the Act.

* * * * *

(f) *Decision.*

* * * * *

If the application is approved, the district director shall record the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application, but not earlier than the date of the approval for asylum in the case of an applicant approved under paragraph (a)(2) of this section.

Dated: May 17, 1991.

Gene McNary,

Commissioner.

[FR Doc. 91-13482 Filed 6-11-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 88-168]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the swine health protection regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8682.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 166 concern swine health protection. Before the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service was the official responsible for various decisions made according to the regulations. We are revising 9 CFR part 166 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to

"Animal and Plant Health Inspection Service (APHIS)." We are also adding a definition of "Administrator." Further, we are removing the definitions of "Deputy Administrator" and "Veterinary Services" because those terms are no longer used in the regulations.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 533, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR part 166 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

Accordingly, we are amending 9 CFR part 166 as follows:

PART 166—SWINE HEALTH PROTECTION

1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371 2(d).

§ 166.1 [Amended]

2. In § 166.1, the definitions of "Deputy Administrator" and "Veterinary Services" are removed; a definition of "Administrator" is added, in alphabetical order; and the definition of "Animal and Plant Health Inspection Service" is revised, to read as follows:

§ 166.1 Definitions in alphabetical order.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

* * * * *

§ 166.1 [Amended]

3. In § 166.1, in the definition of "Area Veterinarian in Charge", remove the words "Veterinary Services" both times they appear and add, in each place, the word "APHIS".

§ 166.12 [Amended]

4. In § 166.12(b), footnote 1, remove the words "Assistant Deputy Administrator, Animal Health Programs, Veterinary Services".

§ 166.15 [Amended]

5. In § 166.15 paragraph (e) remove the words "Veterinary Services," both times they appear; and remove the words "room 870," and add, in their place, the words "Swine Diseases Staff,".

§§ 166.1, 166.10, 166.11, and 166.14 [Amended]

6. In addition to the amendments set forth above, in 9 CFR part 166, remove the word "Deputy" in the following places:

(a) Section 166.1, definition of "Area Veterinarian in Charge";

(b) Section 166.10(a) and (d);

(c) Section 166.11(b) the four times it appears and (c); and

(d) Section 166.14(b).

Done in Washington, DC, this 6th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–13966 Filed 6–11–91; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 91–3]

Community Reinvestment Act

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its Community Reinvestment Act of 1977 (CRA) regulations found at 12 CFR part 25. This final rule implements changes to the CRA caused by the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). This final rule establishes procedures applicable to national banks governing public access to the bank's CRA Performance Evaluation and CRA rating assigned by the OCC during the examination process.

This final rule require national banks to place their CRA Performance Evaluation in their public comment file (a file they maintain under the existing regulation) within 30 business days of receipt from the OCC. National banks must make the evaluation available for public inspection and provide copies of the evaluation, upon request, to interested parties. Banks providing copies of the evaluation may charge a reasonable fee for reproduction and mailing costs. National banks also must amend their current CRA Public Notice to reflect the public availability of the evaluation. This final rule is intended to enhance public information regarding the CRA activities and performance of national banks.

EFFECTIVE DATE: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis R. Deischer or Aida M. Plaza, National Bank Examiners, Compliance Management, (202) 287–4265, or Robert J. Roth, Attorney, Legal Advisory Services Division, (202) 447–1883.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of FIRREA, Public Law 101–73, 103 Stat. 183, 511 (1989) amended the CRA, title VIII, Public Law No. 95–128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*) to provide for written evaluations of an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The amendment also requires that the Federal banking agencies use a four-tier descriptive rating system in their assessment of CRA performance of the institutions they supervise in place of the five-tier rating system in use prior to the amendment. FIRREA required public disclosure of both the written evaluation and CRA rating for examinations commenced on or after July 1, 1990. In addition to these changes, the amendment requires that each written evaluation must contain findings and conclusions with respect to each assessment factor designed to measure a bank's CRA performance. Finally, the written evaluation must contain the institution's CRA rating and a statement describing the basis for the rating.

Notwithstanding the public nature of the written evaluations, FIRREA permits

the Federal banking agencies to maintain as confidential, information provided in confidence to examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. In addition, FIRREA permits the agencies to provide information solely to the examined institution when it determines that doing so will promote the objectives of the CRA.

On December 22, 1989, the Financial Institutions Examination Council (FFIEC) published for comment in the **Federal Register** (54 FR 52914) a proposal to implement all aspects of these amendments. The FFIEC received and reviewed 129 comments from the public, financial institutions, research organizations, governmental agencies, and members of Congress. After carefully considering the comments, the FFIEC adopted the "Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System." See 55 FR 18163 (May 1, 1990).

On June 28, 1990, the OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision published for comment in the **Federal Register** (55 FR 26624) a joint temporary rule implementing those aspects of FIRREA governing public access to CRA Performance Evaluations and CRA ratings. The comment period ended on August 27, 1990. The agencies issued a joint temporary rule to ensure that the changes became effective by July 1, 1990; the effective date mandated by FIRREA. Although the joint temporary rule was effective upon publication, each agency requested public comment prior to issuing a final rule.

Purpose

This final rule adopts the requirements in the joint temporary rule concerning the manner in which national banks must make their CRA Performance Evaluation public. The OCC intends this final rule to enhance information available to the public regarding the CRA activities and performance of national banks. Each national bank must place its most recent CRA Performance Evaluation in its CRA public comment file within 30 business days of receipt. The CRA public comment file is required by the current CRA regulation. Each national bank must also make the CRA Performance Evaluation available, at a minimum, in the public comment file at the bank's head office and, if appropriate, at a designated office located in each additional delineated community. Each national bank must revise the CRA Notice it is already required to maintain in the public lobby of each of its offices, other than off-premises electronic deposit facilities, to inform the public of the availability of the evaluation and where it can be obtained. Each national bank must make copies of the evaluation available upon request for a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

Discussion of Comment Letters

In response to the joint temporary rule, the OCC received four comment letters. Among the issues raised by the commenters was a concern that the language contained in the joint temporary rule authorizing banks to charge a "reasonable fee not to exceed the cost of reproduction and mailing (if applicable)" would result in inadvertent violations of the regulation since the term "reasonable" is subject to interpretation. One commenter sought to impose a "safe harbor" provision authorizing a $.10 per page copying charge and a $2.00 mailing fee. After evaluating this alternative, the OCC has determined that establishing a set fee schedule is unnecessary at this time and that the "reasonable fee" language provides sufficient guidance. The OCC's intent is to ensure that no national bank charges unreasonable or exorbitant fees for providing copies of the evaluations to the public. This provision is similar to the current provision regarding the CRA statement. Since the regulation was adopted in 1978, 12 CFR 25.4(f) has required that national banks provide a copy of the CRA statement to the public upon request, and allowed banks to charge a fee "not to exceed the cost of reproduction".

A commenter advocated wider availability of the CRA Performance Evaluation throughout the various communities an institution might serve. In the joint temporary rule the OCC required that each national bank, at a minimum, place the evaluation in the CRA public file at the head office and at one designated office in each local community. The OCC believes that this approach provides adequate availability. Each national bank must keep a complete CRA public file at its head office. Additionally, if the bank has more than one local community, it must keep those materials relating to each local community at a designated office in that community. This ensures that, at a minimum, a national bank's CRA written evaluation and CRA rating are available to the public at one location in each designated local community served by the bank and at the head office. The bank's head office file must contain materials relating to all local communities served by the bank.

A commenter raised technical points regarding whether a national bank's response for the public to a CRA Performance Evaluation must be placed in the CRA public file in light of the language in the temporary rule. In order to clarify the agency's intentions and eliminate any possible ambiguity in the regulatory language, the OCC is revising paragraphs 25.5(a)(3) and 25.5(c)(3).

First, paragraph 25.5(a)(3) is being revised to strike the reference to public responses to CRA Performance Evaluations. The removal of this language makes it clear that an institution that did prepare a public response to a CRA Performance Evaluation would not be required to place it in the public comment files it must maintain.

Second, paragraph 25.5(c)(3) is being revised to clarify that if an institution prepares a public response to a CRA Performance Evaluation (which it is encouraged but not required to do), it also may make the response available in the same manner as it would make the CRA Performance Evaluation available. CRA Performance Evaluations must be available in the CRA public comment file at the head office of the institution and in the public comment file maintained at a designated office in each local community. The OCC does not intend to mandate any particular availability or location requirements for these optional public responses.

A commenter suggested that requiring the CRA Performance Evaluation to be placed in the public file within 30 business days of receipt failed to provide banks with sufficient time to formulate a response. The commenter advocated extending the filing period to 90 days. The OCC believes that the 30 business day period provides banks with sufficient opportunity to respond to the issues addressed in the evaluation.

Finally, a commenter advocated exempting banks with less than $150 million in total assets from making the CRA Performance Evaluation available in a designated office in each local community as well as the head office. The CRA applies to national banks regardless of their size. Therefore, the OCC believes it is inappropriate to tailor the regulation along such lines.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies

that these changes will not have a significant economic impact on a substantial number of small entities. This final rule imposes only minimal costs on national banks, regardless of size.

Executive Order 12291

The OCC has determined that this final rule will not constitute a "major rule" and therefore does not require a Regulatory Impact Analysis. This final rule will not (1) have an annual effect on the economy of $100 million or more, (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. This final rule imposes only minimal costs on national banks and lets them recover reasonable mailing and copying costs associated with public disclosure of CRA evaluations.

List of Subjects in 12 CFR Part 25

Community development, Consumer protection, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 25 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 25—[AMENDED]

Accordingly, the interim rule amending 12 CFR part 25 which was published at 55 FR 26624–26628 on June 28, 1990, is adopted as a final rule with the following changes:

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 161, 215, 215a, 481, 1814, 1816, 1828(c), and 2901 (as amended).

2. In § 25.5, paragraphs (a)(3) and (c)(3) are revised to read as follows:

§ 25.5 Files of public comments and recent CRA statements.

(a) * * *

(3) Any response to the comments under paragraph (a)(1) of this section that the bank wishes to make; and

* * * * *

(c) * * *

(3) The most recent CRA Performance Evaluation shall, at a minimum, be available at the head office and at an office in each local community so designated under paragraph (c)(2) of this section. The bank may respond to the CRA Performance Evaluation and may make the response available in the same manner as the CRA Performance Evaluation.

* * * * *

Dated: May 30, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91–13157 Filed 6–11–91; 8:45 am]

BILLING CODE 4810–33–M

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R-0691]

Community Reinvestment Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its regulation to implement changes in the Community Reinvestment Act of 1977 (CRA) contained in Title XII of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). This final rule establishes procedures applicable to state member banks governing public access to CRA Performance Evaluations and CRA ratings assigned by the Federal Reserve during the examination process.

This final rule requires state member banks to place their CRA Performance Evaluation and CRA rating in their public comment file (which they are already required to maintain under existing regulations) within 30 business days of receipt. State member banks must make the evaluation and rating available for public inspection and provide copies of the evaluation, upon request, to interested parties. Banks may charge a reasonable fee for reproduction of the evaluation and mailing costs, if applicable. State member banks must also amend their CRA Public Notices to reflect the public availability of the evaluation and rating.

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Janice Scandella, Review Examiner, at (202) 452-3946; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of the FIRREA, Public Law 101-73, 103 Stat. 183, 511 (1989) amended the CRA, Title VIII, Public Law 95-128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*) to provide for written evaluations of an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. It also requires the financial supervisory agencies to use a four-tiered descriptive rating system in their assessments of CRA performance of the institutions they supervise in place of the five-tiered numerical rating system in use prior to the amendment. FIRREA requires the public disclosure of both the written evaluation and CRA rating assigned for examinations commenced on or after July 1, 1990. In addition, it requires that each written evaluation contain findings and conclusions with respect to each of the assessment factors designed to measure CRA performance. Finally, the written evaluation must contain the institution's rating and a statement describing the basis for the rating.

Notwithstanding the public nature of the written evaluations, FIRREA stipulates that the financial supervisory agencies maintain as confidential information provided in confidence to the examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. FIRREA also permits the agencies to provide information solely to the examined institution when they determine that doing so will promote the objectives of the CRA.

On December 22, 1989, the Federal Financial Institutions Examination Council (FFIEC) published for public comment proposals to implement all aspects of these amendments (54 FR 52914). The FFIEC received 129 comments from financial institutions, the public, research organizations, governmental agencies, and members of the Congress. Based on review of the comments received, the FFIEC adopted the "Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System". *See* 55 FR 18163 (May 1, 1990).

On June 28, 1990, the Board, the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, published for public comment a joint temporary rule implementing all aspects of the FIRREA amendments to CRA (55 FR 26624). The agencies issued the temporary rule to ensure that the changes became effective by the effective date mandated by the Act. Although the temporary rule took effect

July 1, 1990, the agencies requested public comment prior to issuing a final rule. The comment period ended on August 27, 1990.

Purpose

This final rule adopts, with only minor modification, the requirements in the temporary rule concerning the manner in which state member banks must make their written CRA Performance Evaluation and CRA rating public. The Federal Reserve intends this final rule to enhance the information available to the public regarding the CRA activities and performance of state member banks. Each state member bank must place its most recent CRA Performance Evaluation containing its rating in its CRA public comment file, already required by existing regulation, within 30 business days of receipt. Each state member bank must also make the CRA Performance Evaluation available, at a minimum, in the public comment file at the bank's head office and, if applicable, at a designated office located in each additional delineated community. Each state member bank must revise the CRA Notice it is already required to maintain in the public lobby of each of its offices, other than off-premises electronic deposit facilities, to inform the public of the availability of the evaluation and where it can be obtained. Each state member bank must make copies of the evaluation available upon request, and may charge a fee not exceeding the cost of reproduction and mailing (if applicable).

Discussion Of Comment Letters

The Board received eight comments in response to the temporary rule. Among the issues raised by the commenters was a concern that the language contained in the temporary rule authorizing banks to charge a "reasonable fee not to exceed the cost of reproduction and mailing (if applicable)" would result in inadvertent violations of the regulation since the term "reasonable" is subject to interpretation. One commenter sought to impose a "safe harbor" provision authorizing a $.10 per page copying charge and $2.00 mailing fee. After evaluating this alternative, the Board determined that establishing a set fee schedule is unnecessary at this time and that the "reasonable fee" language provides sufficient guidance. The Board's intent is to ensure that no state member bank charges unreasonable or exorbitant fees for providing copies of the evaluations to the public. This provision is similar to the current provision regarding the CRA statement. Since the regulation was adopted in 1978, 12 CFR 228.4(f) has required that state member banks provide a copy of the CRA statement to the public upon request, and allowed banks to charge a fee "not to exceed the cost of reproduction." To the Board's knowledge this has not caused any problems of interpretation.

A commenter advocated wider availability of the evaluations throughout the various communities an institution might serve. In the temporary rule the Board required that each state member bank, at a minimum, place the evaluation in the CRA public file at the head office and at one designated office in each local community. The Board believes that this approach provides adequate availability. Each state member bank must keep a complete CRA public file at its head office. Additionally, if the bank has more than one local community, it must keep those materials relating to each local community at a designated office in that community. This ensures that, at a minimum, a state member bank's written CRA evaluation and CRA rating are available to the public at one location in each designated local community served by the bank and at the head office. The bank's head office file must contain materials relating to all local communities served by the bank.

Another commenter expressed concern that the regulation required the bank to place any prepared response to the CRA evaluation in the public file. This was not the intent of the temporary rule. The final rule has been modified to make clear that it does not require, but merely permits, the bank to respond to the CRA evaluation and place its response in the public file should it so desire. Paragraphs 228.5(a)(3) and 228.3(c)(3) of the rule have been revised to eliminate any possible ambiguity in the regulatory language. In responding to a request by the public for a copy of the CRA evaluation, the final rule also allows a bank to include its written response to the evaluation.

A commenter suggested that requiring the CRA Performance Evaluation to be placed in the public file within 30 business days of receipt failed to provide banks with sufficient time to formulate a response. The commenter advocated extending the filing period to 90 days. The Board believes that the 30 business day period provides banks with sufficient opportunity to respond to the issues addressed in the evaluation.

Finally, a commenter advocated exempting banks with less than $150 million in total assets from making the evaluation available in a designated office in each local community as well as the head office. The CRA applies to state member banks regardless of their size. Therefore, the Board believes it is inappropriate to tailor the regulation along such lines.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Board certifies that this final rule will have an insignificant economic impact on small entities. This final rule imposes only minimal costs on state member banks, regardless of size.

List of Subjects in 12 CFR Part 228

Community development; Consumer protection; Credit; Federal Reserve System; Investments; Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 228 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 228—[AMENDED]

Accordingly, the interim rule amending 12 CFR part 228 which was published at 55 FR 26624-26628 on June 28, 1990, is adopted as a final rule with the following changes:

1. The authority citation for part 228 continues to read as follows:

Authority: Community Reinvestment Act of 1977 [title VIII, Pub. L. 95-128, 91 Stat. 1147 (12 U.S.C. 2901 et seq.)]; 12 U.S.C. 321, 325, 1814, 1816, 1828, 1842.

2. In § 228.5, paragraphs (a)(3) and (c)(3) are revised to read as follows:

§ 228.5 Files of public comments and recent CRA statements.

(a) * * *

(3) Any response to the comments under paragraph (a)(1) of this section that the bank wishes to make; and

* * * * *

(c) * * *

(3) The most recent CRA Performance Evaluation shall, at a minimum, be available at the head office and at an office in each local community so designated under paragraph (c)(2) of this section. The bank may respond to the CRA Performance Evaluation and may make the response available in the same manner as the CRA Performance Evaluation.

* * * * *

Board of Governors of the Federal Reserve System, June 4, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-13662 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AB09

Community Reinvestment

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting, as a final rule and with only a minor modification, the temporary (interim) rule that took effect July 1, 1990 governing public access to Community Reinvestment Act (CRA) Performance Evaluations and CRA ratings assigned by the FDIC during the bank examination process.

This final rule requires, as did the temporary rule, that banks place their CRA Performance Evaluation and CRA rating in their public comment file (a file they already maintain under the existing regulation) within 30 business days of receipt from the FDIC. Banks must make the evaluation and rating available for public inspection and provide copies of the evaluation, upon request, to interested parties. Banks providing copies of the evaluation and rating may charge a reasonable fee for reproduction and mailing costs. Banks also must amend their current CRA Public Notice to reflect the public availability of the evaluation and rating. This final rule is intended to enhance public information regarding the CRA activities and performance of banks and to comply with changes to the Community Reinvestment Act resulting from enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

EFFECTIVE DATE: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia A. McCormick, Fair Lending Analyst, Office of Consumer Affairs, (202) 898–3538, or Ken A. Quincy, Chief, Compliance and Special Review Section, Division of Supervision, (202) 898–6753.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget under control number 3064–0092, pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The collection consists of the following elements: (1) Each insured State nonmember bank must adopt a CRA statement for each delineated local community and subject each statement to review by the institution's board of directors at least annually; (2) each insured State nonmember bank must maintain files for public inspection consisting of (a) public comments relating to any CRA statement or to the institution's performance in meeting community credit needs, (b) any of the institution's responses to the public comments, (c) any CRA statements in effect during the last two years and (d) a copy of the public section of the most recent CRA Performance Evaluation prepared by the FDIC; and (3) each insured State nonmember bank must provide, in its public lobby, a public CRA Notice. The estimated annual burden for these recordkeeping requirements is: Number of Recordkeepers: 7,919; Annual Hours per Recordkeeper: 2; Total Recordkeeping Hours: 15,838.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064–0092), Washington, DC 20503.

A. Background

Section 1212 of FIRREA, Public Law 73–101, 103 Stat. 183, 511 (1989) amended the CRA, title VIII, Public Law No. 95–128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*). It provides for written evaluations of an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The amendments also require that the federal financial institution supervisory agencies use a four-tier descriptive rating system in their assessments of CRA performance of the institutions they supervise in place of the five-tier rating system in use prior to the amendments. In addition, the amendments require public disclosure of the written CRA Performance Evaluation and CRA rating on and after July 1, 1990. The amendments further require that the evaluation must contain findings and conclusions with respect to each assessment factor used to measure a bank's CRA performance. Finally, the evaluation must contain the institution's CRA rating and a statement describing the basis for the rating.

FIRREA permits the federal banking agencies to maintain as confidential, information provided in confidence to examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. In addition, FIRREA permits the agencies to provide information solely to the examined institution when it determines that doing so will promote the objectives of the CRA.

On December 22, 1989, the Federal Financial Institutions Examination Council ("FFIEC") published for comment in the **Federal Register** (54 FR 52914) a proposal to implement all aspects of these amendments. The FFIEC received and reviewed 129 comments from the public, financial institutions, research organizations, governmental agencies, and members of Congress. After carefully considering the comments, the FFIEC adopted the "Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System" (Refer to 55 FR 18163 (May 1, 1990)).

On June 28, 1990, the Office of the Comptroller of the Currency; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, published in the **Federal Register** (55 FR 26624) a joint temporary (interim) rule implementing those aspects of FIRREA governing public access to CFR Performance Evaluations and ratings. The agencies issued a temporary rule to ensure that the changes became effective by July 1, 1990, the effective date mandated by FIRREA. Although the temporary rule took effect on July 1, 1990, each agency requested public comment prior to issuing a final rule. The comment period ended on August 27, 1990.

This final rule adopts, with only a minor modification, the requirements in the temporary rule concerning the manner in which banks must make their written CRA Performance Evaluation and CRA rating public on and after July 1, 1990. The FDIC intends this final rule to enhance information available to the public regarding the CRA activities and performance of banks. Each bank must place its most recent CRA evaluation and rating in its CRA public comment file within 30 business days of receipt. The CRA public comment file is required by the current CRA regulation. Each bank must also make the CRA evaluation and rating available, at a minimum, in the public comment file at the bank's head office and at a designated office located in each additional delineated community. Upon placement of the first CRA evaluation in its public file, each bank must revise the CRA Notice maintained in the public lobby of each of its offices to inform the public of the availability of the CRA

evaluation and where it can be obtained. Each bank must make copies of the evaluation available upon request for a reasonable fee not to exceed the cost of reproduction and mailing.

B. Discussion of Comments

In response to the temporary rule, the FDIC received five comment letters. Among the issues raised by the commenters was a concern that the language contained in the temporary rule authorizing banks to charge a "reasonable fee not to exceed the cost of reproduction and mailing (if applicable)" would result in inadvertent violations of the regulation since the term "reasonable" is subject to interpretation. One commenter sought to impose a "safe harbor" provision authorizing a $.10 per page copying charge and $2.00 mailing fee. After evaluating this alternative, the FDIC has determined that establishing a set fee schedule is unnecessary at this time and that the "reasonable fee" language provides sufficient guidance. The intent is to ensure that no bank charges unreasonable or exorbitant fees for providing copies of the CRA evaluations to the public. This provision is similar to the current provision regarding the CRA statement. Since the regulation was adopted in 1978, § 345.4(f) has required that banks provide a copy of the CRA statement to the public upon request, and allowed banks to charge a fee "not to exceed the cost of reproduction."

One commenter advocated wider availability of the CRA evaluations throughout the various communities an institution might serve. The temporary rule required that each bank, at a minimum, place the evaluation in the CRA public file at the head office and at one designated office in each local community. The FDIC believes that this approach provides adequate availability. Each bank must keep a complete CRA public file at its home office. Additionally, if the bank has more than one local community, it must keep those materials relating to each local community at a designated office in that community. This ensures that, at a minimum, a bank's CRA evaluation and rating are available to the public at one location in each designated local community served by the bank and at the head office. The bank's home office file must contain materials relating to all local communities served by the bank.

Another commenter expressed concern that the regulation required the bank to place any prepared response to the CRA evaluation in the public file. This was neither the intent nor the effect of the temporary rule; nor is it the result of the final rule. Rather, the rule does not require, but merely permits, the bank to respond to the CRA evaluation and place its response in the public file should it so desire. Sections 354.5 (a)(3) and 345.3(c)(3) of the rule have been revised to eliminate any possible ambiguity in the regulatory language. In responding to a request by the public for a copy of the CRA evaluation, the final rule also allows a bank to include its written response to the evaluation.

One commenter suggested that requiring the CRA evaluation to be placed in the public file within 30 business days of receipt provided banks with insufficient time to formulate a response. The commenter advocated extending the filing period to 90 days. The FDIC believes that the 30 business day period provides banks with sufficient opportunity to respond to the issues addressed in the CRA evaluation and provides an added incentive for banks to monitor closely their CRA compliance.

One commenter advocated exempting banks with less than $150 million in total assets from making the CRA evaluation available in a designated office in each local community as well as the head office. The CRA applies to all banks regardless of their size. Therefore, the FDIC believes it is inappropriate to tailor the regulation along such lines.

Finally, a commenter expressed concern that the regulation does not address the use of CRA ratings in bank advertising or other marketing activities. Since the CRA rating is publicly available, the FDIC believes it is inappropriate to place limitations on the prudent use of this information. However, the FDIC believes that an institution's use of the CRA rating must not be misleading in any way and must clearly represent that the rating reflects CRA performance, not financial condition. The regulation does stipulate that a bank's CRA Performance Evaluation, as prepared and transmitted to the bank by the FDIC, may not be altered or abridged in any manner.

Other Matters

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that these changes will not have a significant economic impact on a substantial number of small entities. This final rule imposes only minimal costs on banks, regardless of size.

List of Subjects in 12 CFR Part 345

Banks, Banking, Community development, Consumer protection, Credit, Investments, Reporting and recordkeeping requirements.

Accordingly, the temporary (interim) rule amending 12 CFR part 345 which was published at 55 FR 26624, 26627–26628 on June 28, 1990, is adopted as a final rule with the following change:

PART 345—COMMUNITY REINVESTMENT

1. The authority citation for part 345 continues to read as follows:

Authority: Community Reinvestment Act of 1977 (title VIII of the Housing Development Act of 1977, Pub. L. 95–128; 91 Stat. 1147, et seq. (12 U.S.C. 2901 note)).

2. In § 345.5, paragraphs (a)(3) and (c)(3) are revised and a parenthetical is added at the end of the section to read as follows:

§ 345.5 Files of public comments and recent CRA statements.

(a) * * *

(3) Any response to the comments under paragraph (a)(1) of this section that the bank wishes to make; and

* * * * *

(c) * * *

(3) The most recent CRA Performance Evaluation shall, at a minimum, be available at the home office and at the office in each local community so designated under paragraph (c)(2) of this section. The bank may respond to the CRA Performance Evaluation and may make the response available in the same manner as the CRA Performance Evaluation.

* * * * *

(Approved by the Office of Management and Budget under control number 3064–0092)

By order of the Board of Directors.

Dated at Washington, DC, this 26th day of March, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–13214 Filed 6–11–91; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 91–228]

RIN 1550–AA28

Community Reinvestment Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("OTS") is amending its Community Reinvestment Act ("CRA") regulations found at 12 CFR part 563e. This final rule implements changes to the CRA caused by the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") Public Law 101–73, 103 Stat. 183. This final rule establishes procedures applicable to savings associations governing public access to the associations' CRA Performance Evaluations and CRA ratings assigned by the OTS during the examination process.

This final rule requires savings associations to place the CRA Performance Evaluation and CRA rating in a public comment file, (a file they maintain under the existing regulation) within 30 business days of receipt from the OTS. Savings associations must make the evaluation available for public inspection and provide copies of the evaluation, upon request, to interested parties. Savings associations providing copies of the evaluation may charge a reasonable fee for reproduction and mailing costs. Savings associations also must amend their current CRA Public Notice to reflect the availability of the evaluation. This final rule is intended to enhance public information regarding the CRA activities and performance of savings associations.

EFFECTIVE DATE: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Jerauld C. Kluckman, Deputy Assistant Director for Policy, Specialized Programs, (202) 906–5775, or Timothy R. Burniston, Program Manager, Compliance, Specialized Programs, (202) 906–5629, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of FIRREA amended the CRA, title VIII, Public Law No. 95–128, 91 Stat. 1147 (12 U.S.C. 2901 et seq.) to provide for written evaluations of an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The amendment also requires that the federal banking agencies use a four-tier descriptive rating system in their assessments of CRA performance of the institutions they supervise in place of the five-tier rating system in use prior to the amendment. FIRREA required public disclosure of both the written evaluation and CRA rating for examinations commenced on or after July 1, 1990. In addition to these changes, the amendment requires that each written evaluation must contain findings and conclusions with respect to each assessment factor designed to measure an association's performance. Finally, the written evaluation must contain the association's CRA rating and a statement describing the basis for the rating.

Notwithstanding the public nature of the written evaluations, FIRREA permits the agencies to maintain as confidential, information provided in confidence to the examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. In addition, FIRREA permits the agencies to provide information solely to the examined institution when it determines that doing so will promote the objectives of the CRA.

On December 22, 1989, the Financial Institutions Examination Council ("FFIEC") published for public comment a proposal to implement all aspects of these amendments. 54 FR 52914 (Dec. 22, 1989). The FFIEC received and reviewed 129 comments from financial institutions, the public, research organizations, governmental agencies, and members of Congress. After carefully considering the comments, the FFIEC adopted the "Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System." See 55 FR 18163 (May 1, 1990).

On June 28, 1990, the OTS, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of the Comptroller of the Currency, Treasury, published for public comment a joint temporary rule implementing those aspects of FIRREA governing public access to CRA written evaluations and ratings. 55 FR 26624 (June 28, 1990). The comment period ended on August 27, 1990. The agencies issued a temporary rule to ensure that the changes became effective by July 1, 1990, the effective date mandated by FIRREA. Although the temporary rule was effective upon publication, each agency requested public comment prior to issuing a final rule.

Purpose

This final rule adopts the requirements in the temporary rule concerning the manner in which savings associations must make their written CRA Performance Evaluations public. The OTS intends this final rule to enhance information available to the public regarding the CRA activities and performance of savings associations. Each savings association must place its most recent CRA written evaluation in its CRA public comment file within 30 business days of receipt. The CRA public comment file is required by the current CRA regulation. Each savings association must also make the CRA written evaluation and rating available, at a minimum, in the public comment file at the savings association's home office and, if appropriate, at a designated office located in each additional delineated community. Each savings association must revise the CRA Notice it is already required to maintain in the public lobby of each of its offices, other than off-premises electronic deposit facilities, to inform the public of the availability of the evaluation and where it can be obtained. Each savings association must make copies of the evaluation available upon request for a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

Discussion of Comment Letters

In response to the temporary rule, the OTS received four comment letters. In addition to comments received by the agency, the OTS reviewed and considered comments received on the temporary rule by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency. The major comments relating to the method for making the written CRA Performance Evaluations and CRA ratings public are addressed below along with an explanation of the regulatory changes found in this final rule.

A commenter advocated wider availability of the evaluations throughout the various communities an institution might serve. In the joint temporary rule, the OTS required that savings associations place the evaluation, at a minimum, in the CRA public file at the home office and at one designated office in each local community. The OTS believes that this approach provides adequate availability. Each savings association must keep a complete CRA public file at the home office. Additionally, if the association has more than one local community, it must keep those materials relating to each local community at a designated office in that community. This ensures that, at a minimum, a savings association's CRA written evaluation and CRA rating are available to the public at one location in each designated local community served by the association and at the home office. The association's home office file must

contain materials relating to all local communities served by the association.

A commenter raised technical points regarding whether a savings association's public response to a CRA Performance Evaluation must be placed in the CRA public file in light of the language in the temporary rule. In order to clarify the agency's intentions and eliminate any possible ambiguity in the regulatory language, the OTS is revising §§ 563e.5(a)(3) and 563e.5(c)(3).

First, § 563e.5(a)(3) is being revised to strike the reference to public responses to CRA Performance Evaluations. The removal of this language makes it clear that an association that did prepare a public response to a CRA Performance Evaluation would not be required to place it in the public comment files it must maintain.

Second, § 563e.5(c)(3) is being revised to clarify that if an association prepares a public response to a CRA Performance Evaluation (which it is encouraged but not required to do) it also may make the response available in the same manner as it would make the CRA Performance Evaluation available. CRA Performance Evaluations must be available in the CRA public comment file at the home office of the association and in the public comment file maintained at a designated office in each local community. The OTS does not intend to mandate any particular availability or location requirements for these optional public responses.

A commenter suggested that the agencies clarify the manner in which CRA ratings can be marketed by financial institutions for promotional purposes. The agencies have decided not to include any regulatory language regarding the use of CRA ratings in any marketing efforts at this time. The agencies expect, however, that financial institutions that use such ratings will do so in a prudent and professional manner that does not improperly reflect the underlying CRA Performance Evaluation.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule imposes only minimal costs on savings associations, regardless of size.

Executive Order 12291

The OTS has determined that this final rule will not constitute a "major rule" and therefore does not require a Regulatory Impact Analysis. This final rule will not (1) have an annual effect on the economy of $100 million or more, (2) result in a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. This final rule imposes only minimal costs on savings associations and lets them recover reasonable mailing and copying costs.

Lists of Subjects in 12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the temporary rule amending 12 CFR part 563e which was published at 55 FR 26624–26628 on June 28, 1990, is adopted as a final rule with the following changes:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

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

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 et seq).

2. Section 563e.5 is amended by revising paragraphs (a)(3) and (c)(3) to read as follows:

§ 563e.5 Files of public comments and recent CRA statements.

(a) * * *

(3) Any response to the comments under paragraph (a)(1) of this section that the association wishes to make; and

* * * * *

(c) * * *

(3) The most recent CRA Performance Evaluation shall, at a minimum, be available at the home office and at an office in each local community so designated under paragraph (c)(2) of this section. The association may respond to the CRA Performance Evaluation and may make the response available in the same manner as the CRA Performance Evaluation.

* * * * *

By the Office of Thrift Supervision.

Dated: April 18, 1991.

Timothy Ryan,

Director.

[FR Doc. 91–13205 Filed 6–11–91; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–111–AD; Amendment 39–7034; AD 91–13–03]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, which requires inspection of the rudder control tab crank for cracks, and replacement, if necessary. This amendment is prompted by a report of failure of the rudder control tab crank and discovery of cracks in another. This condition, if not corrected, could result in the inability to deflect the rudder manually. An undetected failure of the rudder control tab crank, in conjunction with the loss of the right-hand side hydraulic system fluid, would severely compromise airplane directional control during landing in crosswind and/or engine-out conditions.

DATES: Effective June 27, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1–HCO (54–60).

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ali Bahrami, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988–5236.

SUPPLEMENTARY INFORMATION: An operator of McDonnell Douglas Model

DC-9-80 series airplanes has reported a failure of the rudder tab control crank, P/N 3955539-1. The failure was discovered during a routine walk-around inspection. The rudder tab was found deflected to one side, with the rudder system in the hydraulically-powered mode where the rudder tab would normally be faired with the rudder. During the operator's subsequent fleet inspection, an additional cracked rudder control tab crank was discovered. The part is associated with the composite rudder installation. The cause of failure has been determined by the manufacturer to be metal fatigue. This condition, if not corrected, could result in the inability to deflect the rudder manually. An undetected failure of the rudder control tab crank, in conjunction with loss of the right-hand side hydraulic system fluid, would severely compromise airplane directional control during landing in crosswind and/or engine-out conditions.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-320, dated May 10, 1991, which describes procedures for visual and eddy current inspections of the rudder control tab crank assembly for cracks, and replacement of the crank assembly if cracks are found.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires one-time visual and eddy current inspections of the rudder control tab assembly for cracks, and replacement, if necessary, in accordance with the service bulletin previously described. In addition, operators are required to submit a report of their inspection findings to the FAA.

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

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 120-0056.

This is considered interim action. The FAA may consider further rulemaking to require additional corrective action to ensure that the subject rudder control tab cranks will not fail due to fatigue cracking.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rule Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-13-03. McDonnell Douglas: Amendment 39-7034. Docket No. 91-NM-111-AD.

Applicability: Model DC-9-80 series airplanes and Model MD-88 airplanes; Fuselage Numbers 1269 and subsequent, equipped with a non-metallic, composite rudder assembly; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of rudder control, accomplish the following:

(a) Within 5 days after the accumulation of 3,000 total flight hours, or within 5 days after the effective date of this AD, whichever occurs later, visually inspect the rudder control tab crank assembly, P/N 3955539-1, for cracks, in accordance with the accomplishment instructions of McDonnell Douglas ASB 27-320, dated May 10, 1991. If the rudder control tab crank assembly is cracked, prior to further flight, remove and replace the part with a new like part. Accomplishment of the inspection requirements of paragraph (b) of this AD within 5 days after the accumulation of 3,000 total flight hours, or within 5 days after the effective date of this AD, whichever occurs later, satisfies the requirements of this paragraph.

(b) Within 60 days after accumulation of 3,000 total flight hours, or within 60 days after the effective date of this AD, whichever occurs later, inspect the rudder control tab crank assembly for cracks, using an eddy current inspection method, in accordance with the accomplishment instructions of McDonnell Douglas ASB 27-320, dated May 10, 1991. If the rudder control tab crank assembly is cracked, prior to further flight, remove and replace the part with a new like part.

(c) Within 10 calendar days after performing the inspection required by paragraphs (a) or (b) of this AD, submit a report of any discrepancies discovered, to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425. The report must include the airplane's serial number, total flight hours, and total number of landings.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(f) The inspection and replacement requirements shall be done in accordance with McDonnell Douglas Alert Service Bulletin A27-320, dated May 10, 1991. 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, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCO (54-60). Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7034, AD 91-13-03) becomes effective on June 27, 1991.

Issued in Renton, Washington, on May 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13902 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-108-AD; Amendment 39-7035; AD 91-13-04]

Airworthiness Directives; McDonnell Douglas Model DC-9-87 (MD-87) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9-87 (MD-87) series airplanes, which requires rerouting a wire assembly located on the right side of the airplane. This amendment is prompted by a report of an electrical fire above the aft main cabin ceiling panels caused by an electrical wire bundle chafing against a ceiling panel metal retention clip and subsequently arcing. This condition, if not corrected, could result in loss of engine controls and/or the passengers becoming asphyxiated due to smoke inhalation.

DATES: Effective June 27, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5344.

SUPPLEMENTARY INFORMATION: The FAA has received a report that smoke was observed coming from the ceiling in the passenger compartment forward of the aft galley on a McDonnell Douglas Model DC-9-87 airplane, while on the ground just prior to passenger loading. Subsequent investigation revealed that numerous wires contained in a wire assembly located on the right side of the airplane between stations Y=1022.00 and Y=1062.000 at longeron 3 were burned and damaged due to the wire assembly chafing against a ceiling metal retention clip and subsequently arcing. This condition, if not corrected, could result in loss of engine controls and/or the passengers becoming asphyxiated due to smoke inhalation.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A24-123, dated March 19, 1991, which describes a modification to reroute the wire assembly located on the right side of aircraft between stations Y=1022.000 and Y=1062.000 at longeron 3. Installation of this modification will preclude the subject chafing problem.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires a modification to reroute the pertinent wire assembly in accordance with the service bulletin previously described.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

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

91-13-04. McDonnell Douglas: Amendment 39-7035. Docket No. 91 NM-108-AD.

Applicability: Model DC-9-87 (MD-87) series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent chafing and subsequent arcing of wires which could cause a fire resulting in the loss of engine controls and/or passengers becoming asphyxiated due to smoke inhalation, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the airplane by rerouting the wire assembly located on the right side of the airplane between stations Y=1022.000 and Y=1062.000 at longeron 3 in accordance with McDonnell Douglas Alert Service Bulletin A24-123, dated March 19, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The modification requirements shall be done in accordance with McDonnell Douglas Alert Service Bulletin A24-123, dated March 19, 1991. 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,

Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Service Bulletins, Service Change and Modification Kits, Product Support, Mail Code 73–30. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7035, AD 91–13–04) becomes effective June 27, 1991.

Issued in Renton, Washington, on May 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–13901 Filed 6–11–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA 82

Occupational Exposure to Formaldehyde

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

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 13, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198).

The stay was subsequently extended (54 FR 35639, August 29, 1989; 55 FR 24070, June 13, 1990; 55 FR 32616, August 10, 1990; 55 FR 51698, December 17, 1990; 56 FR 10377, March 12, 1991). OSHA is completing its re-evaluation of the need to stay these paragraphs. More time is needed to complete this evaluation. Consequently the stay is being extended for an additional 60 days so that OSHA may complete this process. While this stay is in effect, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) will be effective until August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–8151.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington DC 20210.

This action is taken pursuant to section 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

PART 1910—[AMENDED]

§ 1910.1048 (Stayed in part)

Therefore, 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) is stayed until August 8, 1991.

Signed at Washington, DC this 7th day of June 1991.

Gerard F. Scannell,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 91–14026 Filed 6–7–91; 4:21 pm]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1–91–065]

Drawbridge Operation Regulations; Danvers River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the Massachusetts Department of Public Works (MDPW), the Coast Guard is implementing temporary regulations for 60 days from 1 July through 29 August 1991, for the Beverly-Salem SR1A Bridge, and the Massachusetts Bay Transportation Authority (MBTA)/ AMTRAK Bridge both between Beverly and Salem, Massachusetts, at mile 0.0 and 0.05, respectively and the Essex County Kernwood bridge between Peabody and Beverly, Massachusetts at mile 1.0, all over the Danvers River, by permitting the draw of the SR1A Bridge to remain closed during the morning and evening rush hours, discontinuing the noon hour closure, and by revising the hours when advance notice for an opening is required during the nighttime hours at all three bridges. This temporary regulation is being implemented to examine the effect on vehicular and marine traffic during the above periods and provides for openings for public vessels of the United States, commercial vessels and vessels in distress. This action will accommodate the need of vehicular traffic, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary regulation becomes effective 1 July 1991 and terminates on 29 August 1991.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION: This Final Temporary Regulation is published in accordance with 33 CFR 117.43, in order to evaluate the drawbridge operating requirements during the prime recreational boating season. In accordance with 5 U.S.C. 533, a notice of proposed rulemaking was not published for these regulations and good cause exists for making them effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of these regulations would not permit evaluation during the prime recreational boating season in July and August where the greatest impacts and benefits would occur.

A Notice of Proposed Rulemaking (CGD1–91–016) has been prepared and appears in the Proposed Rule Section of this **Federal Register.** Interested persons are invited to participate in that rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

Drafting Information

The drafters of this proposal are John McDonald, Project Officer, and Lieutenant John Gately, project attorney.

Discussion of Final Temporary Regulations

The SR1A, the MBTA/AMTRAK and the Essex County Kernwood bridges provide a vertical clearance of 19', 12' and 17' at MHW and 10', 3' and 8' at MLW, respectively. The current regulations require that the bridges open on signal; except that from 12 a.m. to 8 a.m. the draws shall open as soon as possible after notice is given, and the SR1A bridge need not be opened between 11:30 a.m. and 1 p.m. from June 1 through October 31. The temporary regulations for these bridges are that the draws open on signal except that from 12 a.m. to 5 a.m. daily and all day December 25 and January 1 that the draws shall open as soon as possible after notice is given. Additionally, that the draw of the SR1A bridge, need not open from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday thru Friday, except federal holidays for the passage of recreational vessels. Commercial vessels, public vessels of the United States, state and local vessels used for public safety or vessels in a distress shall be passed as soon as possible at any time.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the fact that the regulation will not prevent the mariners from transiting the bridges but requires scheduling of transits around the morning and evening rush hours and advance notice for openings late at night. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. From 1 July 1991 through 29 August 1991, § 117.595 is amended by suspending paragraphs (a) and (b) and adding paragraphs (c) through (e) and the current Danvers River entry under the State of Massachusetts in Appendix A to Part 117 is suspended and a new entry added to read as follows: Because this is a temporary rule, this paragraph will not be codified in the CFR.

§ 117.595 Danvers River.

* * * * *

(c) The following requirements apply to all bridges across the Danvers River:

(1) Public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraphs (d) through (e) of this section, the draws shall open on signal.

(d) The draw of the Beverly-Salem SR1A Bridge, mile 0.0 between Salem and Beverly, MA shall operate as follows:

(1) The draw shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible after notice is given to the drawtenders either at the bridge during the time the operators are on duty or by calling the advance notice telephone number posted.

(2) Except as provided in paragraph (a)(1) of this section, the draw need not be opened Monday through Friday except federal holidays from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m.

(e) The draws of the Massachusetts Bay Transit Authority (MBTA)/ AMTRAK Bridge at mile 0.05 between Salem and Beverly and the Essex County Kernwood bridge at mile 1.0 between Peabody and Beverly, MA, shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible after notice is given to the drawtenders either at the bridge during the time the operators are on duty or by calling the advance notice telephone number posted.

APPENDIX A TO PART 117—Drawbridges Equipped with Radiotelephones

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
*	*	*	*	*	*	
Massachusetts						
*	*	*	*	*	*	
Danvers River	0.0	Beverly/Salem	SR1A, MDPW	Pending	16	13
	0.05	Beverly/Salem	MBTA/AMTRAK, MBTA/AMTRAK	WRD 625	16	13
	1.0	Peabody/Beverly	Essex County Kernwood, MDPW	Pending	16	13
*	*	*	*	*	*	

Dated: May 30, 1991.

P.L. Collom,

Capt. USCG, Commander, First Coast Guard District, Acting.

[FR Doc. 91-13561 Filed 6-11-91; 8:45 a.m.]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3799/R1118; FRL-3928-2]

RIN 2070-AB78

Pesticide Tolerance for Clofentezine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine) in or on apricots and cherries at 1.0 part per million (ppm) each. The tolerance was requested by Nor-Am Chemical Co. and establishes the maximum permissible level for residues of the insecticide in or on stone fruits.

EFFECTIVE DATE: Effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3799/R1118], must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 12, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 9, 1990 (55 FR 19320), EPA issued a notice which announced that Nor-Am Chemical Co., P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, had submitted a pesticide petition (PP 9F3799) to EPA proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide clofentezine ([3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine]) in or on stone fruits at 1.0 ppm each.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petition was subsequently amended on August 24, 1990, by revising the proposal for stone fruits to specify apricots and cherries only. A conditional registration for use of clofentezine on apricots and cherries is being issued concurrently. The conditional registration will automatically expire on September 30, 1993. The Agency has reviewed avian reproduction studies and found them to be deficient. The Agency is requiring that the avian reproduction be repeated. The chronic risks of clofentezine to avian species cannot be fully evaluated until new avian reproduction studies are submitted and reviewed by the Agency. However, because of the relatively low exposure rate and duration (only a single application is allowed), its low acute toxicity to birds and low acute and chronic toxicity to mammals, the Agency believes that the potential chronic effects to avian species which may occur during the conditional registration period would not be significant. The Agency has also identified two aquatic studies, an aquatic invertebrate life- cycle study and fish life-cycle study, that are needed to fully evaluate the potential chronic toxicity of clofentezine to aquatic organisms based on its ovicidal mode of action. Due to the rapid hydrolysis of the compound, the Agency does not expect chronic exposures to occur to aquatic animals. However, since transient exposures to reproducing adults, eggs, or developing embryos from clofentezine could cause some effects, the Agency is requiring the above studies.

The Agency is requiring that the restricted-use classification for clofentezine as a prudent measure in the absence of data to fully evaluate the chronic toxicity of clofentezine to aquatic and avian organisms. After the data described above have been submitted and evaluated the Agency will determine if a continued restricted-use classification is warranted for clofentezine.

The toxicological data considered in support of the tolerance include a 1-year dog feeding study with no-observed-effect level (NOEL) of 50 ppm (1.25 mg/kg/day) (effects observed at 1,000 and 20,000 ppm include elevated serum cholesterol and triglyceride levels); a mouse oncogenicity study which was negative at the doses tested, 50 ppm (7.5 mg/kg/day), 500 ppm (75 mg/kg/day), and 5,000 ppm (750 mg/kg/day); a multi-generation rat study with a NOEL of 400 ppm (20 mg/kg/day) (highest dose tested (HDT)); a rat teratology study which was negative at 3,200 mg/kg/day (HDT) and had a developmental NOEL of 3,200 mg/kg/day; a rabbit teratology study which was negative at 3,000 mg/kg/day (HDT) and also has a NOEL of 1,000 mg/kg/day for maternal toxicity (reduced body weight gain and food consumption) and developmental toxicity (reduced litter and fetal body weights); and a 2-year rat chronic feeding/oncogenicity study which showed an increase in the incidence of centrilobular hepatocyte hypertrophy and showed a statistically significant increase in thyroid follicular cell tumors in male rats at 400 ppm (20 mg/kg/day) (HDT). Gene mutation, chromosomal aberrations, and DNA damage tests were negative for genetic toxicity.

The registrant (Nor-Am) also submitted additional thyroid studies intended to show that there was an indirect mechanism for the follicular cell tumor associated with clofentezine's liver toxicity. The Agency has reviewed the data in accordance with criteria outlined in a draft document entitled, "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Consideration," prepared by the Technical Panel of the Agency's Risk Assessment Forum (December 15, 1987). While this document is still undergoing Agency review, and the assessment procedures set forth therein have not been adopted by the Agency, the draft does provide a useful framework in which to consider the issue. Although

the additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity, the Agency believes that additional data are necessary to more completely define the mechanism of clofentezine's thyroid tumor induction in terms of the criteria listed in the document cited above. Based on the rat chronic feeding/oncogenicity study, the Agency has classified clofentezine as a possible human carcinogen (Group C). The qualitative designation "C" refers to EPA's weight-of-the evidence classification, which in this case shows clofentezine to be a "possible human carcinogen." The classification is based on the Agency's "Guidelines for Carcinogenic Risk Assessment," published in the **Federal Register** of September 24, 1986 (51 FR 22992). The Agency believes a quantitative risk assessment based on the thyroid incidence is not appropriate for the following reasons:

1. The increased tumor incidence was marginally increased above the control incidence only at the highest dose tested (20 mg/kg/day) in the chronic feeding study.

2. The increased incidence was observed only in male rats.

3. The thyroid tumor incidence in the chronic feeding study's highest dose group (20 percent) was slightly greater than the historical range provided by limited-group data (7.5 to 15 percent) from two other studies.

4. The additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity.

5. The mouse was negative for carcinogenic effects at all dose levels, i.e., 50, 500, and 5,000 ppm (equivalent to 7.5, 75, and 750 mg/kg/day, respectively).

6. There are no close structural analogs with carcinogenic concerns identified.

7. Clofentezine is not mutagenic in several acceptable studies.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) also reviewed the weight-of-the-evidence consideration and classification of the oncogenic potential of clofentezine. Its review included additional thyroid studies submitted by Nor-Am that were available at that time. The SAP concluded that thyroid tumors in male rats from the chronic feeding/oncogenicity study with clofentezine did not provide adequate evidence of a potential carcinogenic hazard to humans, and that the carcinogenic potential of clofentezine belongs in Group D (not classifiable as to human carcinogenicity).

The Panel's interpretation was based on observed increases in thyroid-stimulation hormone (TSH) levels and the incidence of thyroid follicular cell hyperplasia which may be responses to decrease in blood levels of circulation thyroid hormones (triiodothyronine (T_3) and tretra-iodothyroxine (T_4)) observed in clofentezine-tested rats. This sequence of reduced circulating thyroid lead to thyroid tumors in rats, and the Panel noted, "Exposure to agents that cause this sequence in rats has not resulted in increased TSH, hyperplasia and thyroid tumors in humans." Therefore, the Panel concluded that there was inadequate data for suggesting human carcinogenicity of a quantitative risk assessment.

Nor-Am has since submitted additional thyroid studies intended to show the mechanism of clofentezine's thyroid tumor induction. The Agency has reviewed these data, but as previously stated, the Agency continues to believe that additional data are needed to more completely define the mechanism of clofentezine's thyroid tumor induction and that the available data are not sufficient to change the classification of clofentezine from Category "C" to Category "D". However, the Agency does agree with the SAP that a quantitative risk assessment is not appropriate.

Based on the 1-year dog feeding study with a NOEL of 1.25 mg/kg/day and using a safety factory of 100, the acceptable daily intake (ADI) for humans is 0.013 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) for this chemical utilizes 4.0 percent of the ADI. The current action will contribute 1.000074 mg/kg/day of residue to human diet utilizing an additional 0.5 percent of the ADI. This results in a total utilization of 4.5 percent of the ADI.

The nature of the residue is understood. An adequate analytical method, high-performance liquid chromatography (HPLC), is avaliable for enforcement.

Because of the long lead time from establishing this tolerance 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: By mail: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, rm. 242, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-4432.

There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth with an expiration date of September 30, 1994. After receipt and evaluation the avian reproduction and aquatic studies, the Agency will consider establishing permanent tolerances without an expiration date for residues of this chemical.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provision of the regulation deemed objectionable and the other grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. 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.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

List of Subjects in 40 CFR Part 180

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

Dated: May 23, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

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

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

2. In § 180.446, by amending paragraph (b) by adding new entries for apricots and cherries, to read as follows:

§ 180.446 Clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine); tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Apricots	1.0
Cherries	1.0
* * * * *	

* * * * *

[FR Doc. 91-13523 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1F3942/R1113; FRL-3888-6]

RIN 2070-AB78

Exemption from the Requirement of a Tolerance for Gibberellins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the class of biochemical plant growth regulators known as gibberellins when used in or on certain raw agricultural commodities (RACs) when applied to growing crops at a rate of less than 20 grams of active ingredient per acre (20 g ai/A) per application. This regulation was requested by Abbott Laboratories.

EFFECTIVE DATE: This regulation becomes effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 1F3942/R1113], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J.Taylor, Product Manager (PM) 25, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 3, 1991 (56 FR 13642), that gave notice that Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064-4000, had submitted pesticide petition (PP) 1F3942 proposing to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the plant growth regulator GA_3 when used on the RAC mint (spearmint and peppermint).

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered include an acute oral toxicity study (rats) with no deaths at 5,050 milligrams per kilogram (mg/kg); an acute dermal toxicity study (rabbit) with no deaths at 2,020 mg/kg; an acute inhalation toxicity study (rat) with no deaths at 3.82 milligrams per liter (mg/L); an acute eye irritation study (rat) showing "minimal effects clearing in less than 24 hours"; a dermal irritation study (rabbits) with a score of "mildly or slightly irritating"; and a dermal sensitization study (guinea pig) scored as "not a dermal sensitizer." All other toxicology data requirements, including subchronic and chronic feeding studies, oncogenicity, reproduction, teratology, and mutagenicity studies, are waived due not only to minimum (if any) health risks associated with gibberelins, but to proposed low-volume use patterns. Dietary exposure (residue chemistry) data requirements have also been waived because of the application rate. If the rate of application is less than 20 g ai/A/application, then dietary exposure data are not requried. In this case, the maximum single application rate is 10 g ai/A. Only one application per year is proposed. The analytical methods for enforcement purposes include high-performance liquid chromatography, spectrofluorimetry, and radioimmunoassay, which are available in the public literature, and a fluorimetric method is published in the Pesticide Analytical Manual, Vol. II.

Gibberellins, classified as a biochemical pesticide according to Pesticide Assessment Guidelines, Subdivision M, are naturally occurring compounds produced by plants and several species of fungi. Based on the low-volume use pattern, applicator exposure will be minute; therefore, adverse human effects are highly unlikely. Gibberellins are not expected to present an unacceptable hazard to humans, fish, and wildlife, or the environment.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that a tolerance for gibberellins is not necessary to protect the public health, and an exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. 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.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities,

Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 23, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1098, an entry for mint is alphabetically added to the list of raw agricultural commodities; as revised the section reads as follows:

§ 180.1098 Gibberellins (GA_3); exemption from the requirement of tolerance.

Gibberellins (GA_3) is exempted from the requirement of a tolerance when used as a plant growth regulator at application rates less than 20 grams of active ingredient per acre (20 g ai/A) in or on the following raw agricultural commodities: Barley, beans, beets (sugar), broccoli, brussels sprouts, cabbage, cauliflower, corn (field, sweet, and popcorn), cotton, cucumber, grapefruit, lemons, lettuce, melons, mint (peppermint and spearmint), mustard greens, oats, onions, oranges, peanuts, peppers, potatoes, rice, rye, sorghum (milo), soybeans, spinach, squash, strawberries, sugarcane, tomatoes, turnips, and wheat.

[FR Doc. 91-13524 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 0E3857, PP 0E3873, PP 0E3881/R1109;FRL-3881-8]

RIN 2070-AB78

Pesticide Tolerances for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for the herbicide glyphosate and its metabolite in or on the following raw agricultural commodities: cocoa beans, genip, and cherimoya. This regulation was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3857, PP 0E3873, PP 0E3881/R1109], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 7, 1991 (56 FR 4960), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experimental Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted the listed pesticide petitions (PP's) to EPA on behalf of the named Agricultural Experiment Stations.

These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for combined residues of the herbicide glyphosate (N-(phosphonomethyl)glycine) and its metabolite amino-methylphosphonic acid (AMPA) in or on the raw agricultural commodities as follows:

1. *PP 0E3857.* On behalf of the Agricultural Experiment Station of Hawaii, in or on cocoa beans at 0.2 part per million (ppm).

2. *PP 0E3873.* On behalf of the Agricultural Experiment Station of Puerto Rico, in or on genip at 0.2 ppm.

3. *PP 0E3881.* On behalf of the Agricultural Experiment Station of California, in or on cherimoya at 0.2 ppm.

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

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

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the other grounds for the objections. If a hearing is granted, the objection must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. 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.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

List of Subjects in 40 CFR Part 180

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

Dated: May 10, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.364(a) is amended by adding and alphabetically inserting the raw agricultural commodities cherimoya, cocoa beans, and genip, to read as follows:

§ 180.364 Glyphosate; tolerance for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cherimoya	0.2
* * * * *	
Cocoa beans	0.2
* * * * *	
Genip	0.2
* * * * *	

* * * * *

[FR Doc. 91-13525 Filed 6-11-91; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300212A; FRL-3846-1]

Isopropalin; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.313 for residues of the herbicide isopropalin (2,6-dinitro-*N,N*-dipropylcumidine) in or on the raw agricultural commodities peppers and tomatoes. EPA is taking this action to remove tolerances for residues of a pesticide for which the related registered food uses were voluntarily cancelled by the registrant before 1982.

EFFECTIVE DATE: This regulation becomes effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number, (OPP-300212A), may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2226.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 9, 1990 (55 FR 19282), which proposed the revocation of tolerances under the Federal Food, Drug, and Cosmetic Act listed in 40 CFR 180.313 for residues of the herbicide isopropalin (2,6-dinitro-*N,N*-dinitropropylcumidine) in or on the raw agricultural commodities peppers and tomatoes.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in detail in the May 9, 1990 proposal and in this final rule, the Agency is hereby revoking the tolerances listed in 40 CFR 180.313 for residues of isopropalin in or on the raw agricultural commodities peppers and tomatoes.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. 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.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published May 9, 1990, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the May 9, 1990 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: June 5, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.313 [Removed]

2. By removing § 180.313 *Isopropalin; tolerances for residues.*

[FR Doc. 91-13952 Filed 6-11-91; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Parts 180 and 185

[OPP-300210A and OPP 300211A; FRL-3846-2]

Oryzalin; Revocation of Tolerances and Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule (1) revokes the tolerances listed in 40 CFR 180.304 for residues of the herbicide oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the raw agricultural commodities peppermint hay, spearmint hay, and sweet potatoes; and (2) revokes the food additive regulation listed in 40 CFR 185.4550 for residues of oryzalin in or on the processed food commodities peppermint oil and spearmint oil, resulting from carryover and concentration of residues in these processed foods when present therein as a result of application of the herbicide oryzalin to growing peppermint and spearmint. EPA is taking this action to remove tolerances, including food additive tolerances, for residues of a pesticide for which the related registered food uses were voluntarily cancelled by the registrant in 1984.

EFFECTIVE DATE: This regulation becomes effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number (OPP-300210A and OPP-300211A), may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration

Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-2226.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 9, 1990 (OPP-300210 at 55 FR 19281), which proposed the revocation of tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) for residues of oryzalin in or on peppermint hay, spearmint hay, and sweet potatoes.

EPA also issued a second proposed rule, published in the same issue of the **Federal Register** (OPP-300211 at 55 FR 19283), which proposed the revocation of the food additive regulations under the FFDCA regulations listed in 40 CFR 185.4550 for residues of oryzalin in or on peppermint oil and spearmint oil, resulting from carryover and concentration of residues in these processed foods when present as a result of application to growing peppermint and spearmint crops. This final rule consolidates the two proposals into one final rule document.

No public comments on either proposal or requests for referral to an advisory committee on OPP-300210 were received in response to the notices of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in detail in the May 9, 1990 proposal and in this final rule, the Agency is hereby (1) revoking the tolerances listed in 40 CFR 180.304 for residues of oryzalin in or on peppermint hay, spearmint hay, and sweet potatoes, and (2) revoking the food additive tolerances listed in 40 CFR 185.4550 for residues of oryzalin in or on peppermint oil and spearmint oil.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. 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.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposals published May 9, 1990 (55 FR 19281, 19283), the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the May 9, 1990 proposals.

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Feed additives, Reporting and recordkeeping requirements.

Dated: June 5, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR parts 180 and 185 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

§ 180.304 [Amended]

b. Section 180.304 *Oryzalin; tolerances for residues* is amended by removing the entries "Peppermint hay," "Spearmint hay," and "Sweet potatoes."

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.4550 [Removed]

b. Section 185.4550 *Oryzalin* is removed.

[FR Doc. 91-13953 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BPD-691-FC]

RIN: 0938-AE82

Medicare Program; Payment for Hospice Care

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period provides for new methodology to update the hospice daily payment rates and for an updated annual payment cap amount for hospice care under the Medicare program. The new methodology for calculating the daily hospice payment rate increase is set forth in section 1814(i) of the Social Security Act as amended by sections 6005 (a) and (c) of the Omnibus Budget Reconciliation Act of 1989.

DATES: Effective Dates: July 12, 1991. These updated hospice payment rates apply to daily payments made for care and services furnished from January 1, 1990 through September 30, 1991. The updated annual hospice cap amount applies to payments made for care and services furnished from November 1, 1989 through October 31, 1990.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on August 12, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, attention: BPD-691-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD–691–FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Randal Ricktor (301) 966–4586.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1812(a)(4) of the Social Security Act (the Act) provides the conditions for Medicare coverage for hospice care of terminally ill beneficiaries. Under the authority of section 1814(i) of the Act, hospices are paid on the basis of one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four categories of payment rates are routine home care, continuous home care, inpatient respite care, and general inpatient care, as described in regulations at 42 CFR 418.302.

The payment rates are periodically updated as required by section 1814(i)(1)(C)(ii) of the Act, and Medicare intermediaries adjust the rates to reflect local differences in wages, as set forth in § 418.306.

Section 1814(i)(2) of the Act specifies that Medicare payment to a hospice for care furnished over the period of a year is limited by a payment cap amount. Each individual hospice's cap amount is calculated by multiplying the yearly cap amount by the number of Medicare beneficiaries who elected to receive and did receive hospice care from the hospice during the cap period (November 1 through October 31).

II. Provisions of this Final Rule With Comment Period

A. Hospice Payment Rates

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1814(i)(1)(C) of the Act to provide for the following two changes in methodology concerning updating the daily payment rates:

- Effective January 1, 1990, the daily payment rates for routine home care and other services included in hospice care will be 120 percent of the rates in effect on September 30, 1989.
- For Federal fiscal years beginning on or after October 1, 1990, the daily payment rate for routine home care and other services included in hospice care will be the payment rates in effect during the previous Federal fiscal year, increased by the hospital market basket percentage increase (as defined in section 1886(b)(3)(B)(iii)) otherwise applicable to discharges occurring in the fiscal year.

Hospice payment rates in effect on September 30, 1989 are as follows:

Routine home care	$63.17
Continuous home care	368.67
Inpatient respite care	65.33
General inpatient care	281.00

Thus, hospice payment rates, effective January 1, 1990 through the remainder of Federal fiscal year (FY) 1990, that is, through September 30, 1990, are as follows:

Routine home care	$75.80
Continuous home care:	
Full rate for 24 hours of care	442.40
Hourly rate	18.43
Inpatient respite care	78.40
General inpatient care	337.20

Consistent with prior rates, these rates are subject to adjustment by a wage index. The amount of each of the FY 1990 rates subject to adjustment by the wage index is as follows:

Category of payment	National rate	Wage component (subject to index)	Non-wage component
Routine home care	$75.80	$52.08	$23.72
Continuous home care	442.40	303.97	138.43
Inpatient respite care	78.40	42.43	35.97
General inpatient care	337.20	215.86	121.34

The hospital market basket percentage increase referred to above, which measures the estimated percentage by which the cost of a representative mix of inpatient hospital goods and services increases from FY 1990 to FY 1991, is 5.2 percent.

However, section 4007(a)(1) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) established a freeze in the amount of payment for hospice care and services furnished under part A by deeming the market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Act) to be 0.0 percent for discharges occurring for the period beginning on October 21, 1990, and ending on December 31, 1990.

Therefore, the hospice payment rates for the period beginning on October 21, 1990 and ending on December 31, 1990 are the same as the FY 1990 rates set forth above.

New hospice payment rates for the remainder of FY 1991, that is, October 1, 1990 through October 20, 1990, and January 1, 1991 through September 30, 1991, are the product of the FY 1990 rates and the market basket increase of 5.2 percent. Accordingly, hospice payment rates for care and services furnished in FY 1991 are as follows:

Routine home care	$79.74
Continuous home care:	
Full rate for 24 hours of care	465.40
Hourly rate	19.39
Inpatient respite care	82.48
General inpatient care	354.73

The amount of each of the new FY 1991 rates subject to adjustment by the wage index is as follows:

Category of payment	National rate	Wage component (subject to index)	Non-wage component
Routine home care	$79.74	$54.79	$24.95
Continuous home care	465.40	319.78	145.62
Inpatient respite care	82.48	44.65	37.83
General inpatient care	354.73	227.06	127.67

The wage index used by HCFA to adjust FY 1990 and FY 1991 Medicare hospice payment rates to reflect local differences in wages remains unchanged. Any proposal to change the wage index used to adjust Medicare hospice payment rates will be published as a notice in the **Federal Register.**

We are implementing this methodology for these changes in payment rates in § 418.306. In addition, several editorial changes have been made in §§ 418.301, 418.302, and 418.405.

Since future annual hospice rate updates will merely reflect the results of the mechanical application of an inflation update required by statute and not any change to the methodology for determining the rates, beginning in FY 1992, the hospice rate update notification will be made through the HCFA Program Instructions Issuances System. Any proposal to change the methodology for determining hospice rates will be published as a notice in the **Federal Register.**

B. Hospice Cap Amount

Section 1814(i)(2)(B) of the Act and § 418.309(a) of the regulations set the initial hospice cap amount for the period November 1, 1983 to October 31, 1984 at $6,500 and specify the manner in which the cap amount is adjusted for accounting years that end after October 1, 1984. The initial cap amount of $6,500 is adjusted for inflation or deflation for cap years that end after October 1, 1984 by using the percentage change in the medical care expenditure category of the Consumer Price Index (CPI–U) for urban consumers, which is published by the Bureau of Labor Statistics (BLS). This adjustment is made using the change in the CPI–U from March 1984 to the fifth month of the cap year. The hospice cap amount for the period November 1, 1988 through October 31, 1989 was $9,010, which reflected the original hospice cap amount of $6,500 increased for inflation from March 1984 to the fifth month of the cap year (March 1989).

For purposes of the cap year that runs from November 1, 1989 through October 31, 1990, an index is needed to measure inflation (or deflation) from March 1984 to March 1990 (the fifth month of the cap year). Since this calculation is not made until after the month of March in each cap year, we cannot, as a practical matter, publish the hospice cap amount before the beginning of the period to which the cap applies.

Consistent with the methodology used in setting last year's cap, we have calculated the increase to the hospice cap amount for the period of November 1, 1989 through October 31, 1990 by dividing the price level in the medical care expenditure category of the CPI–U for March 1990 by the level in the medical care expenditure category of the CPI–U for March 1984 and then multiplying that result by the initial cap amount.

BLS released figures that indicate a March 1990 price level in the medical care expenditure category of the CPI–U of 158.7. This figure divided by the March 1984 price level of 105.4 yields an index of 1.5057 (rounded). The new hospice cap is the product of $6,500 and 1.5057, that is, $9,787. This cap amount applies to hospices for care and services furnished from November 1, 1989 through October 31, 1990.

Beginning November 1, 1990 through October 31, 1991, the annual cap update notification will be made through the HCFA Program Instructions Issuances System.

III. Regulatory Impact Statement

A. Regulatory Impact Analysis

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule;" that is, a final rule that will likely result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The provisions of this final rule with comment period implement statutory requirements. The provisions to increase the hospice payment rates by 20 percent for the period extending from January 1, 1990 through September 30, 1990 and to update the payment rates annually under section 1814(i)(1)(C) of the Act are self-implementing and HCFA has been making payment for hospice care under the new rates since January 1, 1990. The implementation of these provisions will result in additional program costs; however, these additional program costs will not exceed $100 million.

This final rule with comment period also announces the hospice cap amount as required by section 1814(i)(2)(B) of the Act and § 418.309(a) of the regulations and contains no change in the methodology used to formulate it. Furthermore, it does not alter any existing regulation or policy relating to the hospice cap.

Since the provisions of this final rule with comment period do not exceed any of the E.O. 12291 threshold criteria, we do not consider this rule to be a "major" rule and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospices to be small entities.

We expect that the 20 percent increase in the daily payment rates for the period extending from January 1, 1990 through September 30, 1990 and updating the payment rates annually by use of the hospital market basket increase should accomplish the following—

- Ensure that hospices are receiving adequate Medicare payment for services furnished.
- Ensure that Medicare payment is adequately adjusted to keep up with the rate of inflation.
- Encourage more hospices to participate in the Medicare program, making the benefit more widely available to beneficiaries.

As mentioned above, the provisions to increase payment amounts and to raise the payment cap for hospices will be beneficial to both hospices and beneficiaries. Therefore, we have determined, and the Secretary certifies, that a regulatory flexibility analysis is not required.

C. Section 1102(b) of the Act

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Since this rule applies only to hospices, we have determined, and the Secretary certifies, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

IV Other Required Information

A. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in the Effective Date

In adopting substantive rules, we ordinarily publish a notice of proposed rulemaking in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. The notice of proposed rulemaking identifies the legal authority or the administrative necessity for the proposed rule. It also discusses the substance and the reasons for the particular provisions being proposed. Under section 1871(b)(2)(C) of the Act, this procedure can be waived when an agency finds that it is impracticable, unnecessary or contrary to the public interest, and incorporates in a final rule a finding of good cause for waiver.

In this particular case, we find that there is good cause to waive the 60-day notice of proposed rulemaking and opportunity for prior public comment as unnecessary because:

- The statutory amendment is so clear and specific as to leave no room for alternative interpretation.
- The editorial and technical revisions involve no substantive change.

• It is in the public interest not to delay updating the hospice daily payment rates and announcing the updated annual hospice payment cap amount.

In addition, we also normally provide a delay of 30 days in effective date for documents such as this. However, if adherence to this procedure would be impractical, unnecessary, or contrary to the public interest, we may waive the delay in the effective date (5 U.S.C. 553(b)). We find cause to waive the usual 30-day delay in this instance. The statutory amendment is so clear and specific as to leave no room for alternative interpretation, and the editorial revisions involve no substantive changes.

B. Paperwork Reduction Act

This final rule with comment period will not impose information collection requirements. Consequently, it need not be reviewed by OMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

C. Public Comments

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, we will respond to all comments received by the date and time specified in the "Dates" section of this preamble, and issue any necessary changes in a final rule.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR part 418 is amended as set forth below:

PART 418—HOSPICE CARE

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102, 1811–1814, 1815(e), 1861–1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395g(e), 1395x–1395cc and 1395hh).

§ 418.301 [Amended]

2. In § 418.301, the heading is changed from "Reimbursement for hospice care." to "Basic rules." and the table of contents is amended to reflect the change.

3. In § 418.302, paragraph (a) and the introductory language to paragraph (c) are revised to read as follows:

§ 418.302 Payment procedures for hospice care.

(a) HCFA establishes payment amounts for specific categories of covered hospice care.

* * * * *

(c) The payment amounts for the categories of hospice care are fixed payment rates that are established by HCFA in accordance with the procedures described in § 418.306. Payment rates are determined for the following categories:

* * * * *

4. Section 418.306 is revised to read as follows:

§ 418.306 Determination of payment rates.

(a) *Applicability.* HCFA establishes payment rates for each of the categories of hospice care described in § 418.302(b). The rates are established using the methodology described in section 1814(i)(1)(C) of the Act.

(b) *Payment rates.* The payment rates for routine home care and other services included in hospice care are as follows:

(1) The following rates, which are 120 percent of the rates in effect on September 30, 1989, are effective January 1, 1990 through September 30, 1990 and October 21, 1990 through December 31, 1990:

Routine home care	$75.80
Continuous home care:	
Full rate for 24 hours	442.40
Hourly rate	18.43
Inpatient respite care	78.40
General inpatient care	337.20

(2) Except for the period beginning October 21, 1990 through December 31, 1990, for Federal fiscal years that begin on or after October 1, 1990, the payment rates for routine home care and other services included in hospice care will be the payment rates in effect under this paragraph during the previous fiscal year increased by the market basket percentage increase as defined in section 1886(b)(3)(B)(iii) of the Act, otherwise applicable to discharges occurring in the fiscal year. The payment rates for the period beginning October 21, 1990 through December 31, 1990 will be the same as those shown in paragraph (b)(1) of this section.

(c) *Adjustment by intermediary.* The payment rates established by HCFA are adjusted by the intermediary to reflect local differences in wages.

(d) *Federal Register notices.* HCFA publishes as a notice in the Federal Register any proposal to change the methodology for determining the payment rates.

5. Section 418.405 is revised to read as follows:

§ 418.405 Effect of coinsurance liability on Medicare payment.

The Medicare payment rates established by HCFA in accordance with § 418.306 are not reduced when the individual is liable for coinsurance payments. Instead, when establishing the payment rates, HCFA offsets the estimated cost of services by an estimate of average coinsurance amounts hospices collect.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: November 11, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: February 8, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–13880 Filed 6–11–91; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–483; RM–5995, RM–6227 and RM–6228]

Radio Broadcasting Services; Willmar, Princeton and Olivia, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 237C2 to Willmar, Minnesota, as that community's second FM service, in response to a petition filed by Kandi Broadcasting Company (RM–5995). See 52 FR 43208, November 10, 1987. The coordinates for Channel 237C2 at Willmar are 45–01–20 and 95–18–14. There is a site restriction 22.9 kilometers (14.2 miles) southwest of the community.

In response to a counterproposal filed by PM Broadcasting Company (RM–6227), we substitute Channel 291C2 for Channel 292A at Princeton, Minnesota, and modify the license for Station WQPM to specify operation on Channel 291C2. The coordinates for Channel 291C2 are 45–22–19 and 93–51–18.

The counterproposal filed by Olivia Broadcasting Company (RM–6228) to substitute Channel 291C2 for Channel 269A at Olivia, Minnesota, is denied.

EFFECTIVE DATE: July 22, 1991. The window period for filing applications for Channel 237C2 at Willmar will open on

July 23, 1991, and close on August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87–483, adopted May 22, 1991, and released June 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036 (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the table of FM Allotments under Minnesota, is amended by adding Channel 237C2 at Willmar and by removing Channel 292A and adding Channel 291C2 at Princeton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–13991 Filed 6–11–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–282; RM–7169]

Radio Broadcasting Services; McComb, MS, and Kentwood, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 231C1 from McComb, Mississippi, to Kentwood, Louisiana, and modifies the license of Station WXLT(FM) to specify operation on Channel 231C1 in the new community. Channel 231C1 can be allotted to Kentwood in compliance with the Commission's minimum distance separation requirements at Station WXLT(FM)'s present transmitter site. See 5 FCC Rcd 3311 (1990). The coordinates for Channel 231C1 at Kentwood are North Latitude 30–51–18 and West Longitude 90–39–59. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–282, adopted May 23, 1991, and released June 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 231C1 at McComb.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 231C1, Kentwood.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–13846 Filed 6–11–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–602; RM–7154, RM–7447, RM–7448]

Radio Broadcasting Services; Vergennes, VT; Hague and Westport, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Thomas M. Pancoast, allots Channel 244A to Vergennes, Vermont. At the request of EFEM, Inc. the Commission allots Channel 273A to Westport, New York. In addition, at the request of Brian Dodge of Harvest Broadcasting, we allot Channel 229A to Hague, New York. See 55 FR 00885, January 10, 1990. With this action, this proceeding is terminated.

DATES: *Effective date:* July 22, 1991. The window period for filing applications will open on July 23, 1991, and close on August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–602, adopted May 22, 1991, and released June 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Channels 229A, 273A and 244A can be allotted to Hague, and Westport, New York, and Vergennes, Vermont, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 229A can be allotted to Hague, New York, with a site restriction of 12.2 kW (7.6 miles) north of the community to avoid short-spacings to Station WSCG(FM), Channel 228A, Corinth, New York, and a construction permit for Station WNYV(FM), Channel 231A, Whitehall, New York, at coordinates 43–50–51 and 73–26–43. Canadian concurrence of this allotment has been obtained. Channel 273A can be allotted to Westport, New York, with a site restriction of 0.9 kW (0.6 miles) northwest to avoid prohibitive interference to Station CBOF(FM), Channel 273C1, Ottawa, Ontario, and the operating allotment on Channel 274C1, Sherbrook, Quebec, Canada, at coordinates 44–11–24 and 73–26–35. Channel 244A can be allotted to Vergennes, Vermont, without the imposition of a site restriction at coordinates 44–10–00 and 73–15–18. The allotment to Vergennes does not meet the required mileage separation to Station CKOI(FM), Channel 245C1, Verdun, Quebec, Canada. Therefore, since the allotments to Vergennes and Westport create short-spacings to Canadian stations, we have obtained Canadian approval for these channels as specially negotiated short-spaced allotments.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 229A, Hague, and 273A, Westport.

3. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by adding Channel 244A at Vergennes.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13847 Filed 6-11-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-27; RM-7549]

Radio Broadcasting Services; Castle Rock, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Cowlitz Broadcasting Company, allots Channel 296C3 to Castle Rock, Washington, as the community's first local FM transmission service. See 56 FR 8313, February 28, 1991. Channel 296C3 can be allotted to Castle Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.4 kilometers (6.5 miles) north to avoid short-spacing to the site specified in the construction permit for Station KMXI, Channel 294C, Lake Oswego, Oregon, as well as Station KSKD, Channel 296C1, Sweet Home, Oregon. The coordinates for Channel 296C3 at Castle Rock are North Latitude 46-22-10 and West Longitude 122-55-29. Canadian concurrence has been obtained since Castle Rock is located within 320 kilometers (220 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 22, 1991. The window period for filing applications will open on July 23, 1991, and close on August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-27, adopted May 22, 1991, and released June 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the table of FM Allotments under Washington, is amended by adding channel 296C3, Castle Rock.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13992 Filed 6-11-91; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 519

[APD 2800.12A CHGE 24]

General Services Administration Acquisition Regulation; Subcontracting Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise § 519.705-4(d) to require that the contracting officer explain on GSA Form 3584, Checklist for Review of Subcontracting Plan, or attachment his/her determination that an option covered by the subcontracting plan offers no subcontracting opportunities; delete paragraph (e) of § 519.705-4 which repeats information in Federal Acquisition Regulation (FAR) 19.704(a)(3) and (6) and FAR 19.705-4(c); to redesignate paragraph (f) of section 519.705-4 as paragraph (e); to revise section 519.706-70 to reflect the change to section 519.705-4(e) and delete instructions that repeat FAR 19.705.5(a). GSA forms are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Street NW., Washington, DC 20405. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the Federal Register for public comment because it primarily provides internal operating procedures to GSA contracting personnel regarding subcontracting programs.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated September 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). GSA certifies that this rule will not have a significant impact on a substantial number of entities because it is intended to provide internal guidance to GSA contracting officers regarding options covered by the subcontracting plan and to delete language which is duplicative of the FAR.

D. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 519

Government procurement.

1. The authority citation for 48 CFR part 519 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

2. Section 519.705-4 is amended by revising paragraph (d), removing paragraph (e) and redesignating and revising paragraphs (f)(1), (f)(2), and (f)(3) as (e)(1), (e)(2), and (e)(3) to read as follows:

519.705-4 Reviewing the subcontracting plan.

* * * * *

(d) The contracting officer's determination that an option offers no subcontracting opportunities must be explained either on GSA Form 3584 or as an attachment thereto, before it is forwarded to the SBTA and the SBA/PCR for review.

(e)(1) Before determining the responsibility of an offeror on a contract requiring a subcontracting plan, the contracting officer shall review the offeror's compliance with previous subcontracting plans, if any, approved by the GSA contracting activity, including the contractor's performance in submitting subcontracting reports in a timely manner. The findings must be documented on the GSA Form 3584, Checklist for Review of Subcontracting Plan, in the "Remarks" block or on an attachment to the GSA Form 3584 before forwarding it to the SBTA and the SBA/PCR for review.

(2) In addition to (e)(1) of this section, PBS contracting officers must check the quarterly list of PBS contracts with plans provided by AU and contact all other GSA contracting activities holding contracts with the same contractor concerning compliance with the previous year's plan.

(3) When an offeror has consistently failed to submit SF 294 and SF 295 reports in a timely manner or has failed to make a good faith effort to meet its subcontracting goals on previous contracts with plans, the contracting officer shall include on the GSA Form 3584 in the "Remarks" block or in an attachment to the GSA Form 3584 the basis for finding the offeror responsible including the steps the offeror proposes to take that were not included in previous subcontracting plans to ensure compliance with the subcontracting program requirements on the proposed contract.

3. Section 519.706–70 is amended by revising paragraph (e) to read as follows:

519.706–70 Monitoring contractor compliance with subcontracting plans.

* * * * *

(e) Before determining that a contractor's failure to achieve the subcontracting goals was occasioned by bad faith, the contracting officer shall analyze the explanations required by paragraph (b) above or provided pursuant to FAR 19.706.

* * * * *

Dated: May 23, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–13740 Filed 6–11–91; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–112, Amendment 195–45]

RIN 2137– AB72

Transportation of Carbon Dioxide by Pipeline

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes new safety regulations governing the transportation by pipeline of carbon dioxide in a supercritical state. The regulations for carbon dioxide are similar to the regulations for hazardous liquids. Section. 211 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561) requires that the DOT regulate carbon dioxide which is transported by pipeline facilities.

EFFECTIVE DATE: The effective date of this final rule is July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon (202) 366–1640, regarding the contents of this final rule; or the Dockets Unit (202) 366–5046, regarding copies of this final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations in 49 CFR part 195 prescribe safety standards and reporting requirements for pipeline facilities used in the transportation of hazardous liquids, which are defined to include petroleum, petroleum products, or anhydrous ammonia. Section 211 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561) enacted on October 31, 1988 (49 U.S.C. 2015) requires that the Department of Transportation regulate carbon dioxide (CO_2) which is transported by pipeline facilities. On March 16, 1989, the American Petroleum Institute (API) petitioned the Department to amend part 195 to include the regulation of pipelines that transport CO_2. The recommendations contained in the petition are the product of a task force consisting of representatives of nine companies that own or operate CO_2 pipelines. The API recommended that OPS amend existing part 195 rather than write a new part for CO_2 pipelines only, and RSPA adopted this approach. On October 12, 1989, the RSPA published a notice of proposed rulemaking (NPRM) (54 FR 41912) proposing to amend these regulations to also apply to the transportation of CO_2 in the supercritical phase.

The NPRM described the physical properties of CO_2. At normal temperatures and atmospheric pressure, CO_2 is an odorless and colorless gas, not flammable, with a density 1.5 times the density of air. It will not support combustion nor will it sustain life if inhaled. Carbon dioxide may exist simultaneously as a gas, liquid, and solid at its triple point which is −69°F and 60.43 psig. Below the triple point, it may be either a solid or gas depending on temperature and pressure. Dry ice for refrigeration is a common use of CO_2 in solid form. Dry ice at a temperature of −109°F and atmospheric pressure will sublime, that is, pass to the gas phase without going through the liquid state. The critical temperature of CO_2 is 87.8°F. When pressure reaches 1200 psig, CO_2 enters what is called the supercritical phase (also referred to as a dense vapor phase).

Pipeline transportation of CO_2 in the supercritical phase is more desirable than transportation in the gaseous phase. As a dense vapor in the supercritical state, CO_2 can be transported more economically and efficiently using smaller pipelines and pumps because greater volumes of fluid can be transported as a dense vapor than as a gas. In addition, CO_2 would be difficult to transport as a gas because it would enter into two-phase flow at a lower pressure than that required for the efficient pipeline transportation of the CO_2.

Carbon dioxide has been used for many years to aid in the production of crude oil. Because of its high degree of solubility in crude oil and abundance from natural sources, CO_2 became a natural candidate for use in enhanced oil recovery (EOR) projects. Under favorable conditions of pressure, temperature, and composition, the CO_2 mixes with the crude oil. The CO_2 that dissolves in the crude oil increases the volume and decreases the viscosity making the oil more mobile. It also exerts an acidic effect on some types of reservoir rocks and vaporizes some of the oil.

There are a number of sources of CO_2. It can be produced commercially in natural gas plants, ammonia plants, and recovered from power plant stack gas. A better source is from underground reservoirs where CO_2 under pressure occurs naturally.

There are various modes of transportation for CO_2, but for the large volumes required in EOR projects, pipeline transportation is the most reliable and economical. Generally

these pipelines originate in the reservoirs of the four corners area and terminate in the Permian Basin oil field in Texas where most of the EOR projects exist. An exception is the Choctow Pipeline which originates near Jackson, Mississippi, and terminates near McComb, Mississippi. A list of CO_2 pipelines was included in the NPRM.

Pipeline Safety Reauthorization Act of 1988

There have been Congressional concerns regarding the transportation of CO_2 by pipeline over a number of years. The report on the Pipelines Safety Reauthorization Act of 1988 from the House Committee on Energy and Commerce in the 1987 session of the100th Congress points out that "* * * The Committee has for sometime recommended the safety regulation and inspection of CO_2 pipelines." The Committee further notes that:

> * * * The CO_2 pipeline industry has a good safety record and performs an essential service for enhanced oil recovery, but it is a very new industry. It is not a question of its safety record that caused the requirement for safety regulation, but rather the unique potential for disaster if there were ever a break in a CO_2 pipeline * * *.
>
> * * * A recent event demonstrated just how lethal CO_2 can be. On August 21, 1986, a catastrophic release of gas dissolved in Lake Nyos in Cameroon, Africa, killed 1,700 people. At the time, the news media characterized the gas as 'toxic,' 'poisonous' and 'lethal.' Subsequent investigation proved the gas was carbon dioxide.
>
> * * * The Committee believes that since CO_2 is deadly, CO_2 pipelines should have appropriate Federal safety regulations. (H.R. Rep. No. 100–445; 100th Congress; 1st Session (1987).)

Consequently, the requirement to issue regulations for the pipeline transportation of carbon dioxide was included in section 211 of title II of the Pipeline Safety Reauthorization Act of 1988, 49 U.S.C. 2015.

Comments to the NPRM

Five commenters responded to the notice: The Railroad Commission of Texas, Exxon Company, U.S.A., American Petroleum Institute (API), the U.S. Department of the Interior (DOI), and the Public Utility Commission of Oregon. In addition, the NPRM was presented in draft to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) in Washington, DC, on September 14, 1989. The THLPSSC voted unanimously that the draft proposed rules were technically feasible, reasonable, and practicable. A transcript and report of the THLPSSC meeting are in the docket.

Exxon stated that the list of existing CO_2 pipelines is incomplete in that it does not include Amoco's 20-mile pipeline from Bairoil to the Lost Soldier and Wertz fields. Exxon further stated that the La Barge, Wyoming, area is a major CO_2 supply source for Wyoming and has the potential to supply EOR projects as far north as the Williston Basin (North Dakota) and Canada. The RSPA appreciates this additional data and has made these corrections to its records.

The Public Utility Commission of Oregon commented that although Oregon has no CO_2 pipelines at the present, it supported the adoption of the proposed rules for CO_2 pipelines because it believed that pipelines operating at pressures in excess of 1200 psig present a potential public hazard.

The Railroad Commission of Texas commented on the proposal under § 195.1(b)(8) to exclude CO_2 distribution lines in oil production fields. The Railroad Commission disagreed with RSPA's assumption that the CO_2 facilities exempted under § 195.1(b)(8) are typically located in rural areas. Also, the Railroad Commission stated that in Texas, many of these lines operate up to 1400 psig, and they should be covered by the regulations when in populated areas.

RSPA did not propose to regulate CO_2 distribution facilities in oil production operations because those lines were thought to be so closely involved in production as to be production facilities which are generally considered as outside of the scope of the transportation of hazardous liquids. However, a closer scrutiny of the issue shows that CO_2 distribution lines should be regulated. Although CO_2 is used in the production of hazardous liquids, it is not itself produced at those sites. Thus CO_2 lines are not "production facilities" within the meaning of the Hazardous Liquid Pipeline Safety Act. Furthermore, RSPA agrees with the Railroad Commission that those lines are sometimes in populated areas and are operating at high pressures. Therefore, the definition has been revised to more narrowly limit the exception to transportation of CO_2 "downstream from a point in the vicinity of the well site at which carbon dioxide is delivered to a production facility," rather than a "production field distribution system." A production field distribution system is not currently defined in the regulations. The Manual of Oil and Gas Terms, Williams and Myers 7th Edition (1987), defines the term "field" very broadly to include a general area underlain by one or more pools of oil and gas. The Manual further states that the term has a meaning which is usually determined from the context in which it is used. It may refer to a certain geographical area from which oil is produced, or it may be restricted to a particular reservoir. Such a broad definition would result in many CO_2 distribution lines, which could encompass more than a county in Texas, being excepted from the rules. Instead the exception in § 195.1(b)(8) is limited to lines downstream of where carbon dioxide is delivered to a production facility in the vicinity of a well site, rather than excepting all the CO_2 lines in the broad expanses of a production field.

The DOI observed that while they are unaware of the occurrence of large volumes of CO_2 in the Outer Continental Shelf (OCS) that might be developed, it may be timely to include OCS pipelines in the CO_2 rules. RSPA agrees with DOI and, in fact, under § 195.1, the scope of the NPRM covered such offshore lines. Part 195 applies to pipeline facilities on the OCS. Nothing in proposed § 195.1(b) excepted the applicability of part 195 to carbon dioxide pipeline facilities on the OCS; therefore, the final rules apply to any offshore pipeline that carries CO_2 in a supercritical phase downstream from production.

The DOI further commented that the definition that carbon dioxide is "* * * a fluid consisting predominately of carbon dioxide molecules compressed to a supercritical state" is too limiting if the rule is to apply to all pipelines carrying CO_2. RSPA agrees with DOI's observation that the Department has authority under section 211 of the Reauthorization Act to regulate all pipeline transportation of CO_2. However, RSPA has chosen to limit the regulations in part 195 to CO_2 in a supercritical state. At present, for economic reasons, CO_2 is transported by pipeline in a supercritical state, i.e., dense vapor state. In the future, if CO_2 is transported other than as a dense vapor where the part 195 regulations are inappropriate for such transportation, RSPA will issue additional regulations for such transportation.

Exxon was concerned with the definition of "carbon dioxide" in another context. Exxon thought that because "predominant" means more than half and because of the difficulty in determining the super critical point on a mixture of gases, the definition should be changed as follows: "Carbon dioxide" means a fluid consisting of more than 90 percent carbon dioxide molecules, compressed to a supercritical state. The RSPA agrees with Exxon that the definition of "carbon dioxide" needs to be more precise than the proposed

definition in the NPRM. Exxon's definition is more precise and would preclude the problems identified by that company. Therefore, the definition of "carbon dioxide" has been revised to mean a fluid consisting of more than 90 percent carbon dioxide molecules.

The DOI also questioned the requirement in § 195.50(b) that requires an accident report for each failure in a pipeline system when there is a release of CO_2 that results in the loss of 50 or more barrels of CO_2. The DOI points out that carbon dioxide is conventionally measured in its gaseous form in which the unit of measure is thousand standard cubic feet. The DOI further points out that in the event of a pipeline rupture, the CO_2 released would flash to a solid or gaseous phase depending upon controlling conditions and an accurate estimation of the loss in barrels would be very difficult.

The DOI is correct that the throughput of CO_2 in pipelines is most often measured in thousand standard cubic feet. However, as petitioned by API, the loss of carbon dioxide due to a rupture is better reported in barrels because that results in consistent failure reporting criteria with other commodities regulated in part 195 and consistent failure statistics in the RSPA pipeline failure data base. An operator can make the conversion to barrels without difficulty knowing the characteristics of the CO_2 and the pressure and temperature of the CO_2 at the time of the failure. Therefore, RSPA did not adopt this recommendation.

Another DOI comment was that the final rule should exempt pipelines on the OCS from the "line marker" requirements in § 195.410(a) because it would be impractical to mark submerged offshore pipelines. An exemption is not required because section 195.410(b) exempts buried pipelines located offshore or at crossings of or under waterways or other bodies of water from having to place and maintain line markers. This exemption would include CO_2 lines.

Both the API and Exxon were concerned about the proposed change in § 195.102 "Design Temperature." Exxon commented that operating procedures can be implemented which avoid extremely low temperatures during filling and blowdown, making it unnecessary to consider low temperatures in selecting material for CO_2 lines. The API commented that the proposed revision to § 195.102 could be interpreted to mean that all portions of a carbon dioxide system must be made of materials suitable for low temperatures because any portion of a carbon dioxide system could develop a leak and the area around the leak would be subjected to a low temperature because of. the rapid reduction of pressure. RSPA intended § 195.102 in the NPRM to apply only to locations of the pipeline that are intended to be subjected to rapid reduction of pressure during normal operation. Therefore, RSPA has revised this section to limit the selection of pipeline materials for low temperatures to apply to components of CO_2 pipelines that are subject to low temperatures during normal operation because of rapid reduction of pressure such as during blow-down, or during the initial fill of the line.

The API commented that they think it is inappropriate to require valves on carbon dioxide pipeline systems at all water crossings greater than 100 feet in width as required by § 195.206. The API argued that carbon dioxide is not polluting and the potential for an asphyxiating cloud from a pipeline at a water crossing would not be any greater for an underwater pipeline than for a buried or aboveground pipeline as asserted by RSPA. The RSPA believes that valves are needed at water crossings greater than 100 feet because of the hazards of a large vapor cloud in case of a large catastrophic failure under a stream. While the release of CO_2 (from a volcanic source) under Lake Nyos in Africa was eight times larger than a release that can be expected from a pipeline rupture, it is significant to note that it resulted in a vapor cloud that caused 1,700 deaths. The characteristics of the release of a large quantity of CO_2 from under a body of water are not yet clearly understood. Therefore, RSPA has retained this requirement in the final rule.

The API also suggested that the definition of "production facility" include "other facilities where CO_2 is produced and prepared for transportation" in addition to facilities used in the process of extracting carbon dioxide from the ground. The RSPA agrees that CO_2 is sometimes obtained from industrial facilities in addition to being produced from the ground and has amended the definition of "production facility" in § 195.2 accordingly.

The API also suggested that the proposed definition of "production facility" include piping or equipment used in gathering of CO_2 thereby excluding the CO_2 gathering lines from these regulations pursuant to the proposed § 195.1(b)(6). The RSPA has not adopted this suggestion because the definition of "production facility" was intended to be limited to production functions and was not intended to include the piping or equipment used in the gathering of carbon dioxide or hazardous liquids. The proposed rules in the NPRM applied to gathering lines used to collect and transport CO_2 from CO_2 production facilities. RSPA was not persuaded by the comments to exclude these gathering lines in the final rule. It should be noted that the definition of "gathering line" is not applicable to carbon dioxide pipelines nor is there an exception for CO_2 gathering lines under § 195.1(b)(4).

Paperwork Reduction Act

The reporting requirements in subpart B and recordkeeping requirements under sections 195.5(c), 195.266, 195.310, 195.402 and 195.404 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The addition of CO_2 pipelines to part 195 results in approximately 2,000 miles, or about one percent of additional pipelines subject to the reporting and recordkeeping requirements in part 195. This will minimally increase current reporting and recordkeeping burdens and, therefore, RSPA has sought no further approval from OMB.

Impact Assessment

These regulations extend the part 195 pipeline safety regulations to pipelines that transport CO_2, which are few in number. Pipelines under construction before the effective date of the final rule are subject only to the accident and safety-related condition reporting and operation and maintenance requirements of these regulations. This final rule is consistent with industry safety practices; the fiscal impact of these rules is minimal. No commenters raised any cost implications. Therefore, this final rule is considered to be non-major under Executive Order 12291, and is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since the final rule requires minimal compliance expense, it does not warrant preparation of a Draft Regulatory Evaluation. Also, based on the facts available concerning the impact of this final rule, I certify under section 605 of the Regulatory Flexibility Act that it does not have a significant economic impact on a substantial number of small entities. This action has been analyzed under the criteria of Executive Order 12612 (52 FR 41685) and found not to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Carbon dioxide, Pipe, Pipeline safety.

In consideration of the foregoing, RSPA amends 49 CFR part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 *et seq.*; 49 CFR 1.53.

2. Section 195.0 is revised to read as follows:

§ 195.0 Scope.

This part prescribes safety standards and reporting requirements for pipeline facilities used in the transportation of hazardous liquids or carbon dioxide.

3. In § 195.1, paragraphs (a) and (b) (5), (6), and (7) are revised, and paragraph (b)(8) is added to read as follows:

§ 195.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf.

(b) * * *

(5) Transportation of a hazardous liquid or carbon dioxide in offshore pipelines which are located upstream from the outlet flange of each facility on the Outer Continental Shelf where hydrocarbons or carbon dioxide are produced or where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(6) Transportation of a hazardous liquid or carbon dioxide through onshore production (including flow lines), refining, or manufacturing facilities, or storage or in plant piping systems associated with such facilities;

(7) Transportation of a hazardous liquid or carbon dioxide by vessel, aircraft, tank truck, tank car, or other vehicle or terminal facilities used exclusively to transfer hazardous liquids or carbon dioxide between such modes of transportation.

(8) Transportation of carbon dioxide downstream from a point in the vicinity of the well site at which carbon dioxide is delivered to a production facility.

4. In § 195.2, a definition of "carbon dioxide" is added in alphabetical order and definitions of the following terms "interstate pipeline", "pipe or line pipe", "pipeline or pipeline system", "pipeline facility", "production facility" are revised to read as follows:

§ 195.2 Definition.

* * * * *

Carbon dioxide means a fluid consisting of more than 90 percent carbon dioxide molecules compressed to a supercritical state.

* * * * *

Interstate pipeline means a pipeline or that part of a pipeline that is used in the transportation of hazardous liquids or carbon dioxide in interstate or foreign commerce.

* * * * *

Pipe or *line pipe* means a tube, usually cylindrical, through which a hazardous liquid or carbon dioxide flows from one point to another.

Pipeline or *pipeline system* means all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

Pipeline facility means new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide.

Production facility means piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum or carbon dioxide, or associated storage or measurement. (To be a production facility under this definition, piping or equipment must be used in the process of extracting petroleum or carbon dioxide from the ground or from facilities where CO_2 is produced, and preparing it for transportation by pipeline. This includes piping between treatment plants which extract carbon dioxide, and facilities utilized for the injection of carbon dioxide for recovery operations.)

* * * * *

5. Section 195.4 is revised to read as follows:

§ 195.4 Compatibility necessary for transportation of hazardous liquids or carbon dioxide.

No person may transport any hazardous liquid or carbon dioxide unless the hazardous liquid or carbon dioxide is chemically compatible with both the pipeline, including all components, and any other commodity that it may come into contact with while in the pipeline.

6. Section 195.8 is revised to read as follows:

§ 195.8 Transportation of hazardous liquid or carbon dioxide in pipelines constructed with other than steel pipe.

No person may transport any hazardous liquid or carbon dioxide through a pipe that is constructed after October 1, 1970, for hazardous liquids or after July 12, 1991 for carbon dioxide of material other than steel unless the person has notified the Secretary in writing at least 90 days before the transportation is to begin. The notice must state whether carbon dioxide or a hazardous liquid is to be transported and the chemical name, common name, properties and characteristics of the hazardous liquid to be transported and the material used in construction of the pipeline. If the Secretary determines that the transportation of the hazardous liquid or carbon dioxide in the manner proposed would be unduly hazardous, he will, within 90 days after receipt of the notice, order the person that gave the notice, in writing, not to transport the hazardous liquid or carbon dioxide in the proposed manner until further notice.

7. The introductory text and paragraph (b) of § 195.50 is revised to read as follows:

§ 195.50 Reporting accidents.

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

* * * * *

(b) Loss of 50 or more barrels of hazardous liquid or carbon dioxide.

* * * * *

8. The introductory text of § 195.52(a) is revised to read as follows:

§ 195.52 Telephonic notice of certain accidents.

(a) At the earliest practicable moment following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in paragraph 195.50, the operator of the system shall give notice, in accordance with paragraph (b) of this section, of any failure that:

* * * * *

9. Section 195.102 is revised to read as follows:

§ 195.102 Design temperature.

(a) Material for components of the system must be chosen for the temperature environment in which the components will be used so that the pipeline will maintain its structural integrity.

(b) Components of carbon dioxide pipelines that are subject to low temperatures during normal operation because of rapid pressure reduction or during the initial fill of the line must be made of materials that are suitable for those low temperatures.

10. A new § 195.111 is added to read as follows:

§ 195.111 Fracture propagation.

A carbon dioxide pipeline system must be designed to mitigate the effects of fracture propagation.

11. Section 195.116(c) is revised to read as follows:

§ 195.116 Valves.

* * * * *

(c) Each part of the valve that will be in contact with the carbon dioxide or hazardous liquid stream must be made of materials that are compatible with carbon dioxide or each hazardous liquid that it is anticipated will flow through the pipeline system.

* * * * *

12. In § 195.306, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 195.306 Test medium.

(a) Except as provided in paragraphs (b) and (c) of this section, water must be used as the test medium.

* * * * *

(c) Carbon dioxide pipelines may use inert gas or carbon dioxide as the test medium if—

(1) The entire pipeline section under test is outside of cities and other populated areas;

(2) Each building within 300 feet of the test section is unoccupied while the test pressure is equal to or greater than a pressure that produces a hoop stress of 50 percent of specified minimum yield strength;

(3) The maximum hoop stress during the test does not exceed 80 percent of specified minimum yield strength;

(4) Continuous communication is maintained along entire test section; and

(5) The pipe involved is new pipe having a longitudinal joint factor of 1.00.

13. Section 195.401(c) is revised to read as follows:

§ 195.401 General requirements.

* * * * *

(c) Except as provided by § 195.5, no operator may operate any part of any of the following pipelines unless it was designed and constructed as required by this part:

(1) An interstate pipeline, on which construction was begun after March 31, 1970, that transports hazardous liquid.

(2) An interstate offshore gathering line, on which construction was begun after July 31, 1977, that transports hazardous liquid.

(3) An intrastate pipeline, on which construction was begun after October 20, 1985, that transports hazardous liquid.

(4) A pipeline, on which construction was begun after July 11, 1991 that transports carbon dioxide.

14. In § 195.402, paragraphs (c) (7), (9), and (12) and. (e) (2), (4), (5), and (7) are revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(7) Starting up and shutting down any part of the pipeline system in a manner designed to assure operation within the limits prescribed by paragraph 195.406, consider the hazardous liquid or carbon dioxide in transportation, variations in altitude along the pipeline, and pressure monitoring and control devices.

* * * * *

(9) In the case of facilities not equipped to fail safe that are identified under paragraph 195.402(c)(4) or that control receipt and delivery of the hazardous liquid or carbon dioxide, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting this data to an attended location.

* * * * *

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

* * * * *

(e) * * *

(2) Prompt and effective response to a notice of each type emergency, including fire or explosion occurring near or directly involving a pipeline facility, accidental release of hazardous liquid or carbon dioxide from a pipeline facility, operational failure causing a hazardous condition, and natural disaster affecting pipeline facilities.

* * * * *

(4) Taking necessary action, such as emergency shutdown or pressure reduction, to minimize the volume of hazardous liquid or carbon dioxide that is released from any section of a pipeline system in the event of a failure.

(5) Control of released hazardous liquid or carbon dioxide at an accident scene to minimize the hazards, including possible intentional ignition in the cases of flammable highly volatile liquid.

* * * * *

(7) Notifying fire, police, and other appropriate public officials of hazardous liquid or carbon dioxide pipeline emergencies and coordinating with them preplanned and actual responses during an emergency, including additional precautions necessary for an emergency involving a pipeline system transporting a highly volatile liquid.

* * * * *

15. In § 195.403, paragraphs (a) (2), (3), and (4) are revised to read as follows:

§ 195.403 Training.

(a) * * *

(2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in the case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions;

(3) Recognize conditions that are likely to cause emergencies, predict the consequences of facility malfunctions or failures and hazardous liquid or carbon dioxide spills, and to take appropriate corrective action;

(4) Take steps necessary to control any accidental release of hazardous liquid or carbon dioxide and to minimize the potential for fire, explosion, toxicity, or environmental damage;

* * * * *

16. Section 195.410(a)(2) is revised to read as follows:

§ 195.410 Line markers.

(a) * * *

(2) The marker must state at least the following: "Warning" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline" or "Carbon Dioxide Pipeline" (in lettering at least 1 inch high with an approximate stroke of one-quarter inch on a background of sharply contrasting color), the name of the operator and a telephone number (including area code) where the operator can be reached at all times.

* * * * *

17. Section 195.414 is revised to read as follows:

§ 195.414 Cathodic protection.

(a) No operator may operate a hazardous liquid interstate pipeline after March 31, 1973, a hazardous liquid intrastate pipeline after October 19, 1988, or a carbon dioxide pipeline after

July 12, 1993 that has an effective external surface coating material, unless that pipeline is cathodically protected. This paragraph does not apply to breakout tank areas and buried pumping station piping. For the purposes of this subpart, a pipeline does not have an effective external coating, and shall be considered bare, if its cathodic protection current requirements are substantially the same as if it were bare.

(b) Each operator shall electrically inspect each bare hazardous liquid interstate pipeline before April 1, 1975, each bare hazardous liquid intrastate pipeline before October 20, 1990, and each bare carbon dioxide pipeline before July 12, 1994 to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide cathodic protection. Section 195.416 (f) and (g) apply to all corroded pipe that is found.

(c) Each operator shall electrically inspect all breakout tank areas and buried pumping station piping on hazardous liquid interstate pipelines before April 1, 1973, on hazardous liquid intrastate pipelines before October 20, 1988, and on carbon dioxide pipelines before July 12, 1994 as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

18. Section 195.418(a) is revised to read as follows:

§ 195.418 Internal corrosion control.

(a) No operator may transport any hazardous liquid or carbon dioxide that would corrode the pipe or other components of its pipeline system, unless it has investigated the corrosive effect of the hazardous liquid or carbon dioxide on the system and has taken adequate steps to mitigate corrosion.

* * * * *

19. Section 195.440 is revised to read as follows:

§ 195.440 Public education.

Each operator shall establish a continuing educational program to enable the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbpn dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of non-English speaking population in the operator's operating areas.

Issued in Washington, DC, on June 7, 1991.

Douglas B. Ham,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 91–13930 Filed 6–11–91; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–04, Notice 7]

RIN 2127–AC 73

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Standard No. 121, Air Brake Systems, to revise the timing requirements for parking brake systems, add new requirements concerning release performance and accumulation of actuation energy for parking brakes, and incorporate an earlier agency interpretation of the standard into the standard. These changes are intended to ensure the practicability and objectivity of the parking brake timing test, and clarify that a diaphragm is not considered a component of a brake chamber housing, as that term is used in Standard No. 121. The rule will make the testing procedure easier to perform and more objective, eliminate confusion about the application of the standard to single diaphragm brake systems, and improve the consistency of the regulatory language.

DATES: This amendment is effective December 9, 1991.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration 400 Seventh St. SW., Washington, DC 20590. It is requested, but not required, that ten copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW. Washington, DC (202–366–5273).

SUPPLEMENTARY INFORMATION:

I. Background

A. March 1988 Final Rule

In a final rule published in the **Federal Register** (53 FR 7931) on March 11, 1988, NHTSA amended Standard No. 121, Air Brake Systems, to clarify the standard's parking brake requirements, particularly as they relate to air-applied, mechanically held parking brake systems. The amendments required actuation of a mechanical means for parking brake application at the requisite level of retardation within three seconds after operation of the parking brake control. (For trailers, such actuation was required within three seconds after venting to the atmosphere of the front supply line connection is initiated.) In addition, vehicles were required to be capable of meeting requirements related to parking brake retardation force within the three second period. The amendments also required that the grade holding test (or alternative drawbar test) be met with only the mechanical means for parking brake application in operation.

The primary rationale for the parking brake timing requirements is NHTSA's belief that a vehicle's parking brake system should generate retardation force in as short a time as is practicable, since the parking brake system is sometimes used as an emergency braking system. The approach of the March 1988 final rule was to require that vehicles be capable of meeting parking brake retardation force requirements, specified in terms of a grade holding or draw bar test, within a specified time. For trucks and buses, the amendments required minimum parking retardation force requirements to be met at all times after three seconds from the time of actuation of the parking brake control. For trailers, the amendments required minimum parking retardation force requirements to be met at all times after three seconds from the time that venting to the atmosphere of the front supply line connection is initiated.

In responding to commenter concerns that it is not possible to safely conduct the grade holding or draw bar tests within three seconds, NHTSA stated in the March 1988 final rule that it did not believe that manufacturers must, as a practical matter, determine their compliance with the timing requirement during their grade holding or draw bar testing. The agency stated that, instead, certification could be accomplished by using an engineering analysis of the vehicle's parking brake system or, if necessary, a test measuring the air pressure in the parking brake system to determine when the pressure reaches zero. The assumption underlying this statement is that if a vehicle could comply with the grade holding or draw bar test with zero air pressure in the brake chambers, and if the air pressure

in the brake chambers reached zero pressure within three seconds, then the vehicle would be able to comply with the trade holding or draw bar test within three seconds. It should be noted that a test to determine when the air pressure in the parking brake system reaches zero is only appropriate for vehicles equipped with spring brake parking brake systems. For an air-applied, mechanically held parking brake system, a comparable test would determine when the pressure in the parking brake chamber reaches full application pressure.

NHTSA stated in the March 1988 final rule that it believed all parking brakes currently being sold complied with the amendments being adopted. The agency also stated its belief that since any necessary certification could be accomplished by engineering analysis and simple tests, 180 days would provide sufficient leadtime for that purpose. The amendments therefore required compliance effective 180 days after publication of the final rule, while permitting manufacturers to comply prior to that time with either the new requirements or the requirements being superseded.

B. Petitions for Reconsideration

NHTSA received petitions for reconsideration from Navistar International Transportation Corporation (Navistar) and Volvo GM Heavy Truck Corporation (Volvo GM). Both of the petitions concerned the parking brake timing requirements. Navistar was concerned that their brake systems did not generate maximum torque since they required partial wheel rotation after the three seconds to reach full torque. (Most modern-day drum brakes are self-energizing and require a partial rotation to help the primary brake shoe wedge the secondary shoe against the brake drum with greater force.) Volvo GM asked that the agency rescind the application of the requirement to tandem trucks with spring brakes. The company stated that its test results indicated that some of its vehicles would not meet grade holding tests because the pressure drop in the brake system after three seconds still left a residual air pressure of less than five pounds per square inch (psi)—enough to lower the brake torque by a significant amount. Volvo GM also suggested that the 100 psi initial reservoir system pressure test condition be deleted because they claimed that use of a specific value was design restrictive. In partial response to the two petitions, NHTSA delayed the time that the amendments would become effective on a mandatory basis. See 43 FR 35075, September 9, 1988; 54 FR 25460, June 15, 1989. The purpose of the delay was to permit the agency to complete its analysis of the arguments made by the petitioners, and to provide a further response to the petitions.

C. Notice of Proposed Rulemaking and Response to Petitions for Reconsideration

In response to the above petitions for reconsideration, NHTSA published a notice of proposed rulemaking (NPRM) and response to petitions for reconsideration on February 8, 1990 (55 FR 4447). The NPRM proposed to amend Standard 121's parking brake timing requirements, add new requirements concerning release performance and accumulation of actuation energy for parking brakes, and incorporate an earlier agency interpretation of the standard in the language of the standard.

In the NPRM, NHTSA granted the Navistar petition and denied the Volvo GM petition. The agency proposed to revise the test requirements to require the vehicle to be capable of meeting the parking brake retardation force test with the amount of pressure available in the vehicle's parking brake chambers after a three second period. Any brake "wrap-up" (partial revolution of the braked wheels to enable the brake shoes to reach peak torque) time would not be required to occur during the three second test period. The agency believed that the proposed parking brake timing test would resolve Navistar's concern about "wrap-up." Volvo GM's petition to rescind the application of the requirement to tandem trucks was denied because the agency found nothing in the use or design of heavy tandem trucks that supported a need for such a rescission and determined that compliance with the requirements could be easily ensured by the addition of a quick release valve. The second Volvo GM request concerning test conditions was also denied. This request was denied because specification of an initial reservoir system pressure is necessary to insure objectivity of test results. In addition, a 100 psi pressure was selected because it is representative of the brake reservoir system pressure of actual vehicles. The request was also denied because Volvo GM did not suggest any other methods to ensure objective test results nor did it claim that the test condition is inappropriate or unrepresentative. Although the agency denied both requests, NHTSA believed that as a consequence of clarifying the agency's initial intent with respect to whether parking brake chamber air pressure must reach zero within three seconds, the proposed test would likely resolve some of Volvo GM's concerns.

The NPRM also proposed new requirements concerning release performance and accumulation of actuation energy for parking brakes. The first proposed change would add a requirement that a vehicle's parking brakes not be releasable unless adequate energy is available to make a subsequent application. The purpose of the proposed requirement was to prevent situations where parking brakes are released when the vehicle has no braking capability. The second proposed change would add a requirement that an accumulation of energy sufficient to apply the parking brakes at least once be available to the parking brake system. The two proposed requirements would together ensure that a parking brake system remains "fail-safe" in the event of a failure of another brake system on the vehicle. Thus, the parking brakes could not be released unless they were capable of being reapplied, and also under the same conditions, would be capable of at least one application.

The NPRM stated that the proposed amendments would become effective 30 days after the publication of the final rule, except for those amendments concerning release performance and accumulation of actuation energy. The NPRM proposed that mandatory compliance with the proposed new requirements would be required 180 days after publication. The proposed requirements concerning release performance and accumulation of actuation energy were also proposed to become effective 180 days after publication.

Finally, the NPRM proposed an amendment to Standard No. 121 that would incorporate a conclusion of a NHTSA letter interpreting the standard. Specifically, the amendment would make clear that a diaphragm is not a component of a brake chamber housing, as that term is used in Standard No. 121.

In response to the NPRM, 16 comments were submitted. All of these comments were considered in connection with this final rule, and the most significant are discussed below.

II. Response to Comments and Final Rule

A. Parking Brake Timing Requirements

The NPRM proposed that, instead of expressly requiring vehicles to be capable of meeting the grade holding or draw bar test within three seconds, vehicles would be required to be capable of meeting the parking brake

retardation force test with the amount of pressure in the vehicle's parking brake chambers after the three second period.

General Motors Corporation (GM) supported the proposed amendment and commented that, by separating the timing aspect from the performance requirement, NHTSA removed ambiguity from the testing requirements of Standard No. 121. MGM Brakes, a division of Indian Head Industries, Inc. (MGM), believed that compliance with the three second requirement might sacrifice brake torque application. As an example, the company noted that a pressure of five psi in the parking brake chamber reduces the brake chamber output force by approximately 150 pounds, or 900 inch-pounds with a six-inch slack adjuster.

NHTSA has decided to retain the three second requirement. The agency believes that the concerns of MGM do not provide a sufficient justification to increase beyond three seconds the time within which to exhaust air from the typical brake system. Any increase in the three second time would substantially increase the risk of a vehicle running free (i.e., without any brakes) before the emergency braking system became effective. Furthermore, MGM did not submit any information on system configuration that might explain why it needed more than three seconds to fully exhaust air from the braking chambers. Finally, MGM is a component supplier, and as such, does not have to certify any vehicles. The agency received no complaints from truck or trailer manufacturers, who do have to certify vehicles, that the three second requirement is unreasonable. The agency has determined, as noted above, that compliance can be easily ensured by use of a quick release valve.

Bendix Heavy Vehicle Group, of Allied-Signal, Inc. (Bendix), suggested that section S5.6.3.4 be modified to state that the parking brake effort shall not decrease below the effort obtained within three seconds from actuation of the parking brake control. NHTSA is not persuaded that such an amendment is necessary. Section S5.6.3.3 clearly states that there should be no air pressure holding the parking brake system after three seconds. The agency has determined that if there is complete compliance with section S5.6.3.3 (which requires full mechanical actuation of the parking brakes), parking brake effort will not decrease from the effort obtained within three seconds of actuation. Thus, NHTSA has concluded that Bendix's suggested change is unnecessary.

B. Denial of Volvo GM's Petition for Reconsideration

No comments were received concerning NHTSA's denial of Volvo GM's petition to rescind application of the requirement to tandem trucks equipped with spring brakes or its suggestion that the 100 psi initial reservoir system pressure test condition be deleted.

C. Release Performance; Accumulation of Actuation Energy

The NPRM proposed a new requirement concerning release performance and accumulation of actuation energy for parking brakes. The first part of the proposed requirement was that a vehicle's parking brakes not be releasable unless adequate energy is available to make a subsequent application. The purpose of this part of the requirement was to prevent situations where parking brakes are released when the vehicle has no braking capability. The second part of the proposed requirement was that an accumulation of energy sufficient to apply the parking brakes at least once be available to the parking brake system. The proposed requirement was intended to ensure that a parking brake system remains "fail-safe" in the event of a failure of another brake system on the vehicle. Thus, as proposed, the parking brakes could not be released unless they were capable of being reapplied, and, under the same conditions, were capable of at least one reapplication.

GM commented that it did not oppose the new requirements and stated that its testing of its air-braked vehicles indicated that they meet the requirements.

International Transquip Industries (ITI) opposed the proposed requirement. ITI believed that, due to a design feature, its single diaphragm braking system could not comply with the proposed test sequence requirement of section S5.6.6, which requires actuation of the parking brake control, release actuation after thirty seconds, and then a final actuation. ITI stated that the safety-related design feature prevents release of the parking brake if even a small hole exists in the service diaphragm.

As originally proposed, the ITI system would not have been able to comply with the test sequence requirement of section S5.6.6.. However, in this final rule, the wording of section S5.6.6 has been revised from that proposed in the NPRM to be consistent with the test sequence requirement of section S5.6.3. Section S5.6.6 now requires that the supply line be vented, pressurized, and then again vented. Thus, as long as the manufacturer goes through the entire test procedure of S5.6.6 and the brake system complies with S5.6.5, full performance (final actuation with sufficient force) at the end of the testing will constitute compliance with the requirements. NHTSA believes that all current parking brake systems, including that of ITI, meet the requirements.

Bendix suggested that section S5.2.1.1, which requires a protected reservoir at 90 psi, be eliminated since the proposed sequence for trailers (S5.6.6.6) allows release of a trailer parking brake by 100 psi trailer supply line pressure. This comment concerns a section which is not within the scope of this final rule. NHTSA will consider the change suggested by this Bendix in another rulemaking which is now pending.

D. Effective Date

The NPRM stated that the proposed amendments would become effective 30 days after the publication of the final rule, except for those amendments concerning release performance and accumulation of actuation energy. From that time until 179 days after publication of the final rule, manufacturers would have been allowed to comply with either the new requirements or the pre-1988 requirements. Mandatory compliance with the proposed new requirements would have been required 180 days after publication. The NPRM also stated that the proposed requirements concerning release performance and accumulation of actuation energy would also become effective 180 days after publication.

GM stated that it was not opposed to the proposed effective date for mandatory compliance.

Volvo GM objected to the 180 day lead time, asserting that the proposal would require "significant redesign or elimination of parking brake systems that do not utilize 'conventional' spring brakes." The company said it needed 18 months to comply, including six months to "balance stocks on hand and process customer requests."

NHTSA has determined that a 180 day lead time for mandatory compliance is reasonable. As noted above, the agency believes that all current parking brake systems meet the new requirements. The agency believes, at most, that only a relatively simple and inexpensive design change (such as the inclusion of an additional quick release valve that costs $10–15) will be required for compliance if a few vehicles do not comply with the requirements.

E. Clarification that a Diaphragm is not a Brake Chamber Housing Component

The NPRM proposed an amendment to the regulation that would incorporate the conclusion of an interpretative letter to International Transquip Industries, Inc., dated April 9, 1986, that a diaphragm within a brake chamber is not a component of a brake chamber housing for the purposes of Standard No. 121. Under S5.6.3.1 and S5.6.3.5 of Standard No. 121, parking brake systems must be capable of meeting minimum parking brake retardation requirements "with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing)." NHTSA notes that air-applied mechanically held parking brake systems may incorporate a single brake chamber that is common to both the service and parking brake systems. Since a failure in such a brake chamber is a failure of the service brake system (as well as the parking brake system), it is a failure "in any other brake system," in the context of S5.6.3.1 and S5.6.3.5.

Of the 12 responses by manufacturers, users, and brake system consultants, 10 were opposed to the agency's proposed amendment. Nine of the commenters expressly or implicitly stated that the amendment would eliminate from the market the ITI "Mini-Max" brake system (a single-diaphragm braking system) which is considered by those commenters to be reliable and effective. Those commenters included ITI, a vehicle user, a parts supplier, and several consultants. Bendix commented that the proposed amendment "will tend to deter the use and development of pressure applied parking systems such as the Bendix Dual Circuit Air Brake System." Midland Brake, Inc. supported the proposed amendment and GM stated that it did not oppose the new requirements.

ITI proposed that an exemption to the amendment's requirements be made for systems where the "common diaphragm is tested for proper operation on each system air charging or park brake application." Alternatively, ITI proposed that the reapplication requirements be limited to the "need not to be released unless a reapplication can be made."

NHTSA recognizes that the wording of the proposed regulatory text may have caused concern that the ITI "Mini-Max" braking system would not be allowed. This is not the case. NHTSA believes that the "Mini-Max" single diaphragm braking system made by ITI would have been allowed under the proposed amendment. ITI has submitted test results that demonstrate that, as currently designed, the system will sense a rapid pressure drop in the single chamber units and apply the mechanically held portion of the system at a fast enough rate to meet the brake force requirements. ITI has also said that, on a tandem axle vehicle with "Mini-Max" units at all four wheels, the retardation requirements can still be met with a diaphragm failure in one of the units. And as stated above, as along as the manufacturer goes through the entire test procedure of S5.6.6 and the brake system complies with S5.6.5, full performance (final actuation with sufficient force) at the end of the testing will constitute compliance with the requirements. Thus, ITI's proposal that the reapplication requirements be limited to the "need not to be released unless a reapplication can be made" have been addressed by the current language of section S5.6.6. NHTSA believes that all current parking brake systems meet the requirements.

To avoid any confusion about whether brake systems that use only one diaphragm for both operational and parking brake systems are covered by the standard and have to comply, NHTSA has revised paragraphs 5.6.3.1, 5.6.3.3, 5.6.3.4, 5.6.3.5, 5.6.5.1, 5.6.5.3, 5.6.6.1, 5.6.6.3, 5.6.6.4, and 5.6.6.6 to avoid possible confusion. In each paragraph where the words "diaphragm of a brake chamber" appeared in the proposed rule, NHTSA has replaced them with the words "brake chamber diaphragm that is part of any other brake system including a diaphragm."

The agency has made another change in the wording of the regulatory text of the final rule as compared to the proposal. The wording of S5.6.6.6 (which addresses the test sequence for trailers) has been revised to be consistent with that of S5.6.6.3 (which addresses the test sequence for trucks and buses). This change is designed to improve test consistency.

III. Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. NHTSA believes that all parking brakes currently being sold comply with the amendments. If testing should show that a few vehicles do not comply with the timing requirements in this final rule, NHTSA believes that the only necessary change would be the inclusion of an additional quick-release valve, at a cost of about $5 to $10. If testing should show that a few vehicles do not comply with this final rule's requirements related to release performance and accumulation of actuation energy for parking brakes, the agency again believes that only relatively minor changes would be needed to ensure compliance.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. As indicated above, NHTSA believes that no parking brakes currently being sold are likely to be affected by these amendments. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has also analyzed this rule for the purpose of the National Environmental Policy Act. The agency has determined that the final rule would not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S5.6 introductory text is revised to read as follows:

* * * * *

S5.6 *Parking brake system.* Each vehicle other than a trailer converter dolly shall have a parking brake system that under the conditions of S6.1 meets the requirements of S5.6.1 or S5.6.2, at the manufacturer's option, and the requirements of S5.6.3, S5.6.4, S5.6.5, and S5.6.6. However, the trailer portion of any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer, shall meet the requirements of this section, or, at the option of the manufacturer, the requirements of § 393.43 of this title.

* * * * *

3. S5.6.3 through S5.6.3.5 of § 571.121 are revised to read as follows:

S5.6.3 *Application and holding.* Each parking brake system shall meet the requirements of S5.6.3.1 through S5.6.3.4, except that, at the option of the manufacturer, the parking brake system in each vehicle manufactured before December 9, 1991 may meet either those requirements or the requirements specified in S5.6.3.5.

S5.6.3.1 The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), when the pressures in the vehicle's parking brake chambers are at the levels determined in S5.6.3.4.

S5.6.3.2 A mechanical means shall be provided that, after a parking brake application is made with the pressures in the vehicle's parking brake chambers at the levels determined in S5.6.3.4, and all air and fluid pressures in the vehicle's braking systems are then bled down to zero, and without using electrical power, holds the parking brake application with sufficient parking retardation force to meet the minimum performance specified in S5.6.3.1 and in either S5.6.1 or S5.6.2.

S5.6.3.3 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time of actuation of the parking brake control, the mechanical means referred to in S5.6.3.2 shall be actuated. For trailers, with the supply line initially pressurized to 100 psi using the supply line portion of the trailer test rig (Figure 1) and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, no later than three seconds from the time venting to the atmosphere of the front supply line coupling is initiated, the mechanical means referred to in S5.6.3.2 shall be actuated. This requirement shall be met for trucks, buses and trailers both with and without any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system).

S5.6.3.4 The parking brake chamber pressures for S5.6.3.1 and S5.6.3.2 are determined as follows. For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), is introduced in the brake system. The parking brake control is actuated and the pressures in the vehicle's parking brake chambers are measured three seconds after that actuation is initiated. For trailers, with the supply line initially pressurized to 100 psi using the supply line portion of the trailer test rig (Figure 1) and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), is introduced in the brake system. The front supply line coupling is vented to the atmosphere and the pressures in the vehicle's parking brake chambers are measured three seconds after that venting is initiated.

S5.6.3.5 *Optional requirement for vehicles manufactured before December 9, 1991.* The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system). Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

4. S5.6.5 through S5.6.5.4 are added to § 571.121 to read as follows:

S5.6.5 Release Performance. Effective December 9, 1991, each parking brake system shall meet the requirements specified in S5.6.5.1 through S5.6.5.4.

S5.6.5.1 For trucks and buses, with initial conditions as specified in S5.6.5.2, at all times after an application actuation of the parking brake control, and with any subsequent level of pressure, or combination of levels of pressure, in the reservoirs of any of the vehicle's brake systems, no reduction in parking brake retardation force shall result from a release actuation of the parking brake control unless the parking brakes are capable, after such release, of being reapplied at a level meeting the minimum performance specified either in S5.6.1 or S5.6.2. This requirement shall be met both with and without the engine on, and with and without single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system).

S5.6.5.2 The initial conditions for S5.6.5.1 are as follows. The reservoir system pressure is 100 psi. If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the supply line coupling.

S5.6.5.3 For trailers, with initial conditions as specified in S5.6.5.4, at all times after actuation of the parking brakes by venting the front supply line coupling to the atmosphere, and with any subsequent level of pressure, or

combination of levels of pressure, in the reservoirs of any of the vehicle's brake systems, the parking brakes shall not be releasable by repressurizing the supply line using the supply line portion of the trailer test rig (Figure 1) to any pressure above 70 psi, unless the parking brakes are capable, after such release, of reapplication by subsequent venting of the front supply line coupling to the atmosphere, at a level meeting the minimum performance specified either in S5.6.1 or S5.6.2. This requirement shall be met both with and without any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system).

S5.6.5.4 The initial conditions for S5.6.5.3 are as follows. The reservoir system and supply line are pressurized to 100 psi, using the supply line portion of the trailer test rig (Figure 1). If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the rear supply line coupling.

5. S5.6.6 through S5.6.6.6 are added to § 571.121 to read as follows:

S5.6.6 Accumulation of Actuation Energy. Effective December 9, 1991, each parking brake system shall meet the requirements specified in S5.6.6.1 through S5.6.6.6.

S5.6.6.1 For trucks and buses, with initial conditions as specified in S5.6.6.2, the parking brake system shall be capable of meeting the minimum performance specified either in S5.6.1 or S5.6.2, with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), at the conclusion of the test sequence specified in S5.6.6.3.

S5.6.6.2 The initial conditions for S5.6.6.1 are as follows. The engine is on. The reservoir system pressure is 100 psi. If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the supply line coupling.

S5.6.6.3 The test sequence for S5.6.6.1 is as follows. The engine is turned off. Any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), is then introduced in the brake system. An application actuation of the parking brake control is then made. Thirty seconds after such actuation, a release actuation of the parking brake control is made. Thirty seconds after the release actuation, a final application actuation of the parking brake control is made.

S5.6.6.4 For trailers, with initial conditions as specified in S5.6.6.5, the parking brake system shall be capable of meeting the minimum performance specified either in S5.6.1 or S5.6.2, with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), at the conclusion of the test sequence specified in S5.6.6.6.

S5.6.5.5 The initial conditions for S5.6.6.4 are as follows. The reservoir system and supply line are pressurized to 100 psi, using the supply line portion of the trailer test rig (Figure 1). If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the rear supply line coupling.

S5.6.6.6 The test sequence for S5.6.6.4 is as follows. Any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), is introduced in the brake system. The front supply line coupling is vented to the atmosphere. Thirty seconds after the initiation of such venting, the supply line is repressurized with the trailer test rig (Figure 1). Thirty seconds after the initiation of such repressurizing of the supply line, the front supply line is vented to the atmosphere. This procedure is conducted either by connection and disconnection of the supply line coupling or by use of a valve installed in the supply line portion of the trailer test rig near the supply line coupling.

Figure 1—[Amended]

6. Figure 1 is revised to read as follows:

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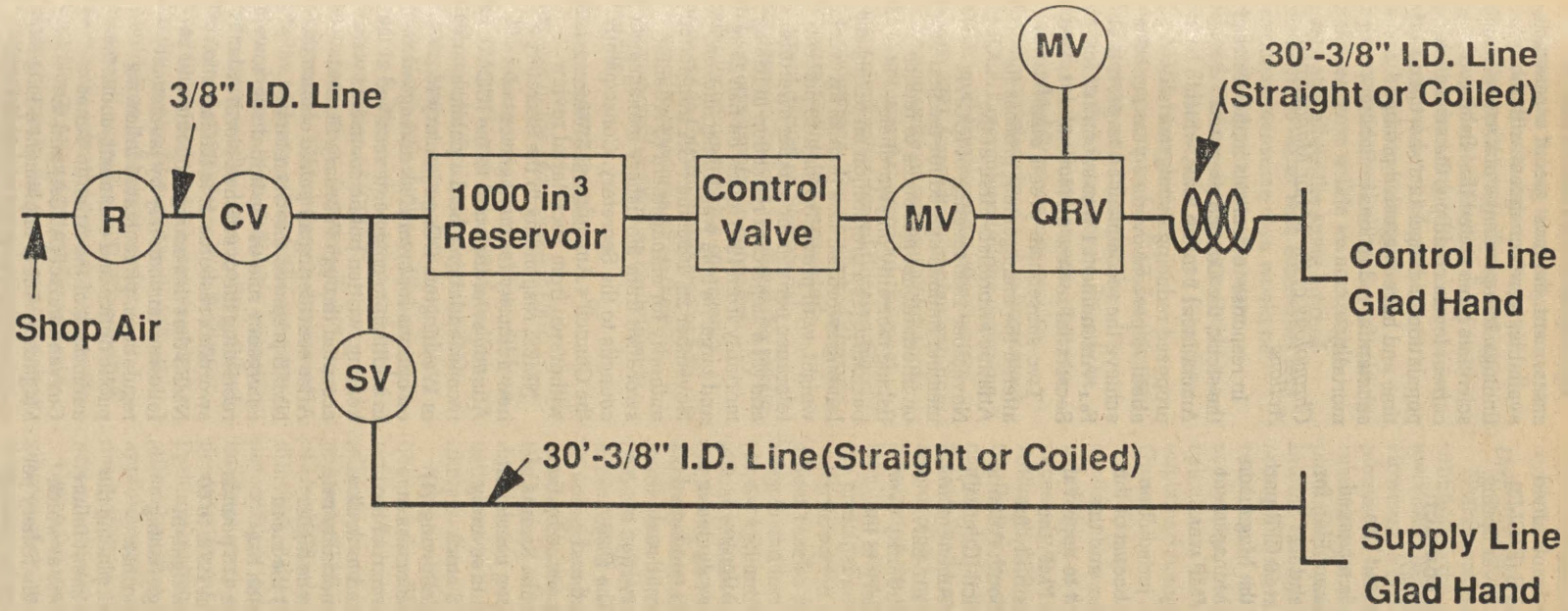

SV - Shut-off Valve
R - Regulator (set at 100 psi for service brake actuation tests;
95 psi for service brake release tests;
100 psi for parking brake tests in S5.6.3.3, S5.6.3.4, S5.6.5.4 and S5.6.6.5;
and any pressure above 70 psi for parking brake test in S5.6.5.3)
CV - Check Valve
MV - Metering Valve (Variable or Fixed)
QRV - Quick Release Valve

Figure 1. Trailer Test Rig.

BILLING CODE 4910-59-C

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Issued on June 4, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-13596 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640-1140]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency rule to amend for 180 days the regulations governing the Atlantic swordfish fishery to (1) redefine the swordfish management unit to include the entire North Atlantic Ocean north of 5°N. latitude; (2) establish a minimum size limit of 31 inches (78.7 cm) carcass length for swordfish with a 15 percent allowance for undersized swordfish based on the number of swordfish landed per trip; (3) establish an annual quota for the directed swordfish fishery of 6.0 million pounds (2.73 million kilograms (kg)), dressed weight, divided equally between the periods January 1 through June 30, 1991, and July 1 through December 31, 1991; (4) further subdivide each of the 3.0-million pound (1.36 million kg) quotas into a drift gillnet quota of 30,044 pounds (13,628 kg) and a quota for other allowable commercial gear (i.e., longline and harpoon) of 2,969,956 pounds (1,347,172 kg); (5) limit the possession of swordfish after a gear-type closure to a bycatch limit of two swordfish except for vessels using or possessing harpoon gear for which no bycatch is allowed; (6) provide for NMFS-approved observers on cooperating permitted vessels; and (7) prohibit the sale of swordfish caught in the recreational fishery and restrict gear in the recreational fishery to rod and reel. The intended effect of this emergency rule is to respond to the critical condition of the swordfish resource by reducing fishing mortality on the stock to levels that will increase the probability of rebuilding the spawning stock biomass to a level that reduces the likelihood of recruitment failure.

EFFECTIVE DATES: June 12, 1991 through December 9, 1991.

ADDRESSES: Copies of documents supporting this action may be obtained from Richard B. Stone, NMFS (F/CM3), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-427-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was prepared by the five fishery management councils with jurisdiction over the waters off the east coast of the Atlantic, the Gulf of Mexico, and the Caribbean Sea. Subsequent to approval and implementation of the FMP, the Secretary assigned responsibility for amending the FMP to the South Atlantic Fishery Management Council (Council). The Fishery Conservation Amendments of 1990 (FCA), Public Law 101-627, transferred management authority over the Atlantic swordfish fishery to the Secretary.

Background

Status of the Stock

The status of the North Atlantic swordfish stock has been evaluated in a series of stock assessments conducted by the NMFS and the International Commission for the Conservation of Atlantic Tunas (ICCAT). The 1989 assessments were reviewed and confirmed as scientifically sound by two independent scientific panels. Results of these assessments have been consistent and indicate that the stock is severely overfished. The 1989 NMFS stock assessment indicated the following: (1) The adult spawning stock biomass in 1987 was only about 40 percent of the 1978 level and has continued to decline since; (2) the 1989 fishing mortality rate was approximately four times higher than the $F_{0.1}$ target rate; (3) the mean size of swordfish in the catch has declined continuously from 115 pounds (52.2 kg), dressed weight, in 1978, to 60 pounds (27.2 kg), dressed weight, in 1988; and (4) continuing high fishing mortality would result in further declines in spawning stock, placing the stock in jeopardy of recruitment failure. $F_{0.1}$ is a fishing mortality rate at which the increase in yield from the fishery per increased fishing effort is 10 percent of what is was when fishing mortality was very low. $F_{0.1}$ is frequently used as a target for effective fishery management. At $F_{0.1}$, the stock will produce near maximum sustainable yield.

The results of the 1990 ICCAT assessment, the most recent assessment available, were consistent with these findings. Independent stock assessment scientists have stated that fishing at current levels could put the swordfish population in danger in a short period of time and have suggested prompt, substantial reductions in fishing mortality.

Chronology of the Major Management Actions

In response to declines in the status of the stock, the Council prepared Amendment 1 to the FMP, which proposed reducing fishing mortality about 78 percent over a 3-year period to achieve the recommended target rate of $F_{0.1}$. Amendment 1 was submitted for Secretarial review on November 1, 1990.

Two subsequent events significantly altered the management process for Atlantic swordfish. First, at the November 1990 meeting of ICCAT, member nations agreed for the first time on international measures to reduce fishing mortality on swordfish—basically, (1) a prohibition on taking and landing swordfish less than 25 kg, whole weight, with provision for a 15 percent tolerance per trip for smaller swordfish, and (2) a 15 percent reduction in fishing mortality from 1988 levels on fish 25 kg and larger, whole weight. Second, on November 28, 1990, the FCA transferred authority for management of Atlantic swordfish from the fishery management councils to the Secretary. Consequently, the Council's Amendment 1 was withdrawn from Secretarial review.

NMFS, responding to the Secretary's new authority for management of Atlantic swordfish and to the ICCAT recommendations, held a public hearing in Washington, DC, on January 15, 1991, on options for swordfish management. In addition to comments received at the hearing, written public comments were accepted through February 15, 1991. After considering all public comments, NMFS prepared this Secretarial emergency rule as the initial step toward rebuilding the overfished North Atlantic swordfish resource. It is the intention of NMFS that this emergency rule will be followed immediately by permanent regulations, promulgated following public notice and comment, under the authorities of the Atlantic Tunas Convention Act (ATCA) and the Magnuson Act to implement a long-term management program to rebuild and conserve the swordfish resource.

Need for Emergency Action

The documented decline of the Atlantic swordfish resource and

scientific recommendations for prompt reductions in fishing mortality are outlined in the background section above. Immediate regulatory action is necessary to avoid further delay in initiating rebuilding of the resource and to minimize the risk of recruitment failure. In addition, immediate implementation will allow the rebuilding of the resource within an acceptable period and allow the same level of rebuilding to occur with somewhat less restrictive measures than would be required if implementation were delayed. Further, it is apparent that the United States will be obliged (1) under the ATCA to implement recommendations of ICCAT for the 1991 fishing year, and (2) under the Magnuson Act to cooperate directly or through international organizations to conserve highly migratory species. NMFS has determined not to implement the ICCAT recommendations under the ATCA until they become effective on July 31, 1991. Immediate implementation under authority of section 305(c)(1) of the Magnuson Act provides the most timely mechanism for addressing the U.S. obligations. The public hearing on February 15 and the associated comment period on Secretarial management options provided the public with an opportunity to comment generally on most of the emergency measures in this rule, although not on the specific measures or on their particular combination as contained in this rule.

Management Measures

Changes in the Management Unit

The management unit is changed from the western North Atlantic swordfish stock, as specified in the current FMP and implementing regulations, to the entire North Atlantic swordfish stock, in order to facilitate this action and future implementation of ICCAT recommendations for swordfish management. This change is consistent with the majority of scientific opinion. Although there is no definitive scientific evidence to resolve the question of stock structure, the 1990 Swordfish Review Panel concluded that it is reasonable, initially, to consider all North Atlantic swordfish as a single stock for assessment purposes. ICCAT swordfish assessment scientists prefer and use the single North Atlantic stock hypothesis.

This change in the management unit is not expected to have a substantial impact on participants in the fishery during the period of effectiveness of this emergency rule. Because few U.S. vessels operate outside the western North Atlantic, few additional U.S.-harvested swordfish will be subject to regulation under this change.

Drift Gillnets

NMFS seriously considered prohibiting the use of drift gillnets in the swordfish fishery in this emergency rule. However, a policy decision was made to pursue the ban through regular rulemaking and to protect the other participants and the environment in the interim through a reduction in the gillnet sector in a manner similar to the reduction in the other commercial sectors, i.e., from 1988 landings. The calculation of the gillnet quota is explained below, under "Annual Quota."

As discussed in the background section above, Atlantic swordfish are overfished, and restrictive quotas are necessary to rebuild the resource. Although drift gillnets have been used in the fishery since 1980, most of the current driftnetters have been in the fishery for 3 years or less. In contrast, harpooning began in the late 1800s and dominated the fishery until 1962, when longlines were introduced and became the principal gear.

Participation and landings by drift gillnet vessles were very low (2 or 3 vessels and less than 100,000 pounds (45,400 kg)) until the late 1980s. Drift gillnet vessels landed 84,127 pounds (38,160 kg) in 1988. The fishery expanded significantly in 1989, when landings reached 848,355 pounds (385,153 kg), dressed weight, and, according to swordfish logbook reports, 20 vessels used drift gillnets. In 1990, a total of 25 gillnet vessels were active in the fishery. Although final 1990 landings data are not yet available, preliminary estimates indicate that 1990 landings are likely to exceed the 1989 level.

Atlantic drift gillnet landings have been confined largely to the northeastern states. Prior to 1989, drift gillnets accounted for less than 3 percent of U.S. swordfish landings north of North Carolina and about 1 percent of total U.S. Atlantic landings. In 1989, the percentages increased to 18.6 percent of landings north of North Carolina and 8.3 percent of total Atlantic landings. Preliminary 1990 data indicate drift gillnet landings comprised approximately 23 percent of landings north of North Carolina and over 9 percent of total Atlantic landings.

Given the relative efficiency of drift gillnets, if no quota were established, their share of available landings under the overall reduced quota would be expected to increase further to the detriment of the more traditional harpoon and longline sectors of the fishery. Since most drift gillnet landings occur from June through November, it is likely that a disproportionate share of the July–December quota would be taken by drift gillnet vessels. Drift gillnet landings at the 1989 level would account for 29 percent of the 1991 July–December quota. Allowing this redistribution of the available quota would adversely affect traditional participants and would not represent a fair and equitable allocation. The reductions in total allowable catch necessary to begin rebuilding the overfished swordfish resource will substantially reduce landings by traditional participants, an impact that would be compounded by allowing the small, non-traditional drift gillnet fishery to harvest a disproportionate share of the quotas.

Best available information, based on observer data, indicates that the swordfish drift gillnet fishery has the highest known rate of incidental marine mammal mortality of any U.S. fishery in the Atlantic. Observer data from 27 trips (123 sets) between August 1989 and December 1990 documented 124 marine mammal mortalities, averaging 1.01 mortalities per set. At least eight species of the suborder Odontoceti (dolphins and beaked whales) were involved. Although extrapolation of observed mortality rates to the entire drift gillnet fleet would be speculative, clearly the total marine mammal mortality associated with this gear is high. Reducing the gillnet fishery's effort from recent levels should reduce considerably marine mammal mortality. NMFS will continue to monitor the rate of marine mammal mortality.

The reduction from 1988 landings for drift gillnets will affect substantially the current 25 gillnet participants. The loss in terms of cost of gear for banning the drift gillnets was estimated at $714,150 in the Council's Amendment 1. While the cost under this emergency rule will be less, it could come close to that figure. Since development of Amendment 1, the number of participants has increased from 20 to 25. Drift gillnet landings in 1989 were 848,355 pounds (385,153 kg), dressed weight. A substantial portion of the value associated with these landings is likely to be lost to the gillnet fishermen. The amount of the loss will depend on the success of these fishermen in taking the existing quota, employing alternative gear to target swordfish, or switching to alternative fisheries, and the costs associated with these alternatives.

Minimum Size Limit

The minimum size limit of 31 inches (78.7 cm) carcass length (equivalent to 25 kg, whole weight) will decrease

fishing mortality on 1- and 2-year-old swordfish; increase yield per recruit; and contribute to increasing the spawning stock biomass. The size limit is expected to reduce the fishing mortality rate based on number of small fish landed to about 30 percent of the 1989 rate. However, the realized 1991 mortality rates on small fish could be substantially higher, depending on discard mortality rates and fleet behavioral practices. Observer coverage on cooperating vessels will be used to assess these factors. The effectiveness of seasonal area closures in reducing discard mortality will also be evaluated as soon as possible. These closures, if warranted, may be incorporated in the ATCA regulations that are expected to be implemented prior to expiration of this emergency rule. Areas where small fish comprise a high proportion of landings are expected to be most affected by the minimum size limit. Small vessels with more limited mobility are also likely to be affected significantly, especially if located in areas where small fish predominate.

NMFS is providing a trip allowance for undersized swordfish of up to 15 percent of the total number of swordfish landed per trip to reduce waste of undersized swordfish that otherwise would have to be released dead. In addition, because some swordfish caught will be attacked by sharks, landing of shark-bit swordfish carcasses will be allowed. Any shark-bit carcass less than the minimum size limit of 31 inches (78.7 cm) carcass length will be counted against the 15 percent trip allowance for undersized swordfish.

Annual Quota

The total allowable catch (TAC) in 1991 for the U.S. fishery is 6.9 million pounds (3.14 million kg), dressed weight, which is a 35 percent reduction in harvest compared to 1988 and 1989 landings. The TAC was determined by examining the effect of the ICCAT swordfish recommendations, based on the following assumptions: (1) Single North Atlantic swordfish stock hypothesis; (2) fish greater than the minimum size (25 kg) are equivalent to ages 3 and older (these will be referred to as large fish); (3) Spain and the United States will reduce the fishing mortality rate-at-age on large fish by 15 percent from the 1988 levels while the mortality rate-at-age on large fish by all other nations combined will be maintained at 1989 levels (the last year for which we have data); and (4) all nations will adhere to the minimum size and to the trip allowance for undersized swordfish (the 15 percent tolerance for small fish was calculated for the United States, Spain, and all other nations combined). Based upon these assumptions, the status quo during the 1990 fishing year, and recruitment equal to the average of the available time-series, projections were made of the swordfish population to estimate the expected yield to the U.S. fishery in 1991. The TAC of 6.9 million pounds (3.13 million kg) represents a significant step toward the ultimate goal of reducing fishing mortality to the $F_{0.1}$ target level.

The TAC is divided into a 6.0-million pound (2.73 million kg) directed-fishery quota and a 0.9-million pound (0.41 million kg) bycatch allocation. The directed-fishery quota is divided into two 3.0-million pound (1.36 million kg) quotas for each of the 6-month periods, January–June and July–December. Each of the 3.0-million pound quotas is further subdivided into a drift gillnet quota of 30,044 pounds (13,628 kg) and a quota for other allowable commercial gear (i.e., longline and harpoon) of 2,969,956 pounds (1,347,172 kg).

The estimated gillnet catch of undersized swordfish (age 2 or less) in 1988 was 25.8 percent by number, of the total gillnet catch. The estimated yield by weight of undersized swordfish to the gillnets was estimated as 9.2 percent of the total gillnet yield by weight. The estimated proportion of gillnet landings of fish aged 3 or more is thus 90.8 percent of the gillnet total yield. The 6.9 million pound TAC was computed based on a 15 percent reduction in the fishing mortality of age 3+ swordfish relative to the 1988 level with a 15 percent by number landed bycatch tolerance for fish aged 2 or less. For consistency with the restrictions placed on the longline fishery, an allocation for the gillnet gear was computed based on the estimated 1988 gillnet level of mortality.

Assuming the same age-specific selectivity by gillnets in 1988 as estimated for 1989, the yield of age 3+ swordfish to gillnets was 76,387 lbs (34,649 kg), dressed weight (90.8% of 84,127 lbs (38,160 kg), dressed weight), with an estimated average size of 116.4 lbs (52.8 kg), dressed weight. This corresponds to an estimated 656 fish aged 3 or more taken by gillnets in 1988 and represents 0.9 percent of the US catch of fish aged 3 or more in 1988. The 1988 gillnet catch of fish aged 2 or less was 7,740 lbs (3,511 kg), dressed weight (9.2 percent of 84,127 lbs (38,160 kg), dressed weight), with an estimated average size of 32.5 lbs (14.7 kg), dressed weight. This corresponds to an estimated 230 fish aged 2 or less and represents approximately 0.3 percent of the 1988 US catch of fish aged 2 or less.

The 1991 US TAC of 6.9 million pounds (3.13 million kg) corresponds to a total US projected catch of 72,044 fish aged 3+ and a catch of 12,632 fish aged 2 or less. For consistency with the US fishing pattern from the ICCAT base year of 1988, the projected catch (in numbers of fish) by gillnets in 1991 would be 648 fish aged 3+ (0.9 percent of 72,044) with a projected average size of 90.8 lbs (41.2 kg), dressed weight and a projected landed catch of 38 fish aged 2 or less, with a projected average size of 32.9 lbs (14.9 kg), dressed weight, for a total yield of 60,088 lbs (27,256 kg), dressed weight.

The seasonal availability of directed-fishery quotas will help to distribute the swordfish catches temporally and geographically; the majority of swordfish landings from January through June occur in the southern area and the majority of landings from July through December occur in the northern area. Vessels in the directed swordfish fishery may fish in any area as long as an applicable quota is available. Large, highly mobile vessels are expected to have some inherent advantages in competing for the available quotas.

The bycatch allocation is based upon an estimate of the swordfish bycatch in fisheries targeting other large pelagic species, e.g., tuna. After a directed-fishery quota is reached, or is projected to be reached, the fishery subject to that quota will be closed. Vessels subject to the closure will be restricted to the two-fish bycatch limit and all swordfish will be counted against the bycatch allocation.

The effective date of a closure is 5 days after the date the notice of closure is filed at the Office of the Federal Register. Thus, vessels at sea with swordfish aboard in excess of the bycatch trip limit will have a minimum of 5 days to return to port to offload their swordfish. Broadcasts of the closure notice over NOAA Weather Radio will be used to ensure immediate notice of this action as soon as the date of closure is known.

Bycatch Limit

A bycatch limit will apply after a closure of a directed swordfish fishery. This bycatch limit will allow an owner or operator of a vessel shoreward of the outer boundary of the EEZ to possess or land two swordfish after the applicable directed fishery closes, unless the vessel uses or has aboard harpoon gear in which case no swordfish may be possessed or landed. Two swordfish is the current estimate of the average number of swordfish larger than 25 kg taken incidentally per trip in the tuna

longline fishery. The bycatch limit will reduce waste of swordfish that otherwise would have to be released dead and will ensure that landings under the bycatch trip limit are made only by vessels truly catching swordfish as bycatch. There is no bycatch allowance for a vessel with a harpoon because this gear is selective and does not involve a legitimate incidental catch. To provide effective enforcement of the bycatch limit, this rule prohibits the transfer of swordfish from one vessel to another shoreward of the outer boundary of the EEZ after the applicable directed fishery is closed.

Observers

For effective management of the swordfish fishery, additional data are needed, particularly regarding the mortality of discarded fish—either undersized or in excess of the bycatch trip limit. Better data are also needed on the average number of swordfish taken incidentally per trip in the tuna longline fishery. These data can best be provided by on-board observers. The Science and Research Director, Southeast Fisheries Science Center, NMFS, will embark NMFS-approved observers on cooperating and permitted vessels to collect the needed data. The placement of any NMFS-approved observers aboard swordfish vessels pursuant to this rule will be based upon voluntary participation of the vessel owners or operators and arranged through terms mutually agreed upon by the vessel owner or operator and the Science and Research Director. These terms will require the participating vessel owner or operator to: (1) Provide the observer free accommodations and food equivalent to that provided the crew; (2) allow the observer access to and use of the vessel's communications equipment and personnel for transmitting and receiving messages related to observer duties; (3) allow the observer access to and use of navigating equipment and personnel to determine vessel position; (4) allow the observer access to the vessel's bridge, working decks, holding bins, weight scales, holds, and other spaces used to hold, process, weigh, or store fish; and (5) allow the observer to inspect and copy the vessel's log, communications log, and any records associated with the catch and distribution of fish. The extent of observer coverage during the period these emergency regulations are effective is currently unknown, but is expected to be small.

Recreational Fishery

Annual recreational landings of swordfish are estimated to be fewer than 50 fish. Because, historically, recreational fishing mortality has been negligible, quotas on the recreational fishery are considered inappropriate at this time. However, recreational fishermen, whose catch will not be counted against the commercial quotas, will not be allowed to sell their swordfish catch. Prohibiting the sale of a recreationally caught swordfish will maintain the traditional difference between recreational and commercial swordfish fishermen. The impacts of this measure are expected to be negligible. Recreational swordfish fishermen are defined in this rule to be those possessing only rod and reel gear aboard their vessel.

Findings

The Secretary finds that the current severely overfished status of the Atlantic swordfish resource constitutes a resource emergency. Accordingly, the Secretary hereby amends the regulations implementing the FMP on an emergency basis to be effective for up to 180 days, as authorized by section 305(c) of the Magnuson Act.

To provide vessels at sea an opportunity to offload swordfish that may be smaller than the minimum size limit specified in this emergency rule, this emergency rule is not effective until 5 days after it is filed with the Office of the Federal Register.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law. The Secretary finds for good cause (i.e., to prevent fishing that would seriously interfere with necessary protection of the Atlantic swordfish resource) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this emergency rule, or to delay for 30 days its effective date, under the provisions of sections 553(b)(B) and (d)(3) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget with an explanation of why is is not possible to follow the regular procedures of that order.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act for preparation of a regulatory flexibility analysis because no general notice of proposed rulemaking for this rule is required by law.

An environmental assessment (EA), prepared by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concludes that there will be no significant impact on the human environment as a result of this action. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator determined that this emergency rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the Atlantic, Gulf of Mexico, and Caribbean states that have approved coastal zone management programs. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This emergency rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is amended from June 12, 1991 through December 9, 1991 as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

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

2. In § 630.1, paragraph (b) is suspended and a new paragraph (d) is added to read as follows:

§ 630.1 Purpose and scope.

* * * * *

(d) This part governs the conservation and management of the North Atlantic swordfish stock.

* * * * *

3. In § 630.2, the definition for "Western North Atlantic swordfish stock" is suspended and new definitions for "Drift gillnet," "North Atlantic swordfish stock," "Recreational fishery," and "Trip" are added, in alphabetical order, to read as follows:

§ 630.2 Definitions.

* * * * *

Drift gillnet, sometimes called a drift entanglement net or drift net, means a flat net, unattached to the ocean bottom, whether or not it is attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

* * * * *

North Atlantic swordfish stock means those swordfish in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude. The North Atlantic swordfish stock is the management unit for these regulations.

* * * * *

Recreational fishery means the harvest of swordfish from a vessel with only rod and reel gear aboard.

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departures from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

* * * * *

4. In § 630.5, a new paragraph (c) is added to read as follows:

§ 630.5 Recordkeeping and reporting.

* * * * *

(c) *At-sea observer coverage.* An NMFS-approved observer may be embarked aboard a fishing vessel if arranged mutually between the Science and Research Director and the owner or operator of the vessel for which a permit has been issued under § 630.4(b). Participation by the vessel owner or operator will be on a voluntary basis.

5. In § 630.7, paragraph (e) is suspended, and new paragraphs (i) through (q) are added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(i) Assault, resist, oppose, impede, harass, intimidate, or interfere with an NMFS-approved observer aboard a vessel.

(j) Land a swordfish that is smaller than the minimum size specified in § 630.26(a), except for the trip allowance for undersized swordfish, as specified in § 630.26(b).

(k) Possess or land a swordfish in other than whole or dressed form, as specified in § 630.26(c).

(l) During a closure under § 630.28(a), fish for swordfish, or possess or land swordfish in excess of the bycatch limit, as specified in § 630.28(b)(1) and (b)(2).

(m) During a closure under § 630.28(a) of the fishery with gear other than drift gillnet, fish for or possess aboard a vessel using or having aboard harpoon gear, or land from such vessel, swordfish, as specified in § 630.28(b)(3).

(n) During a closure under § 630.28(a), transfer a swordfish from a fishing vessel subject to the closure or receive a swordfish from such fishing vessel, as specified in § 630.28(c).

(o) Purchase, offer for barter, trade, or sale, or barter, trade, or sell a swordfish harvested in the recreational fishery, as specified in § 630.29.

(p) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a swordfish.

(q) Violate any other provision of this part, any provision of or notice issued under subpart B, the Magnuson Act, or any other regulation or permit promulgated under the Magnuson Act.

6. Section 630.22 is suspended, new §§ 630.25 through 630.29 are added to subpart B, and a new figure 1 is added to the part to read as follows:

§ 630.25 Gear restrictions.

The only type of fishing gear authorized for the recreational fishery is rod and reel.

§ 630.26 Size limit.

(a) *Minimum size.* Except as specified in paragraph (b) of this section, the minimum allowable size for a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state is 31 inches (78.7 cm) carcass length, measured along the body contour (i.e., a curved measurement) from the cleithrum to the anterior portion of the caudal keel (CK measurement). The cleithrum is the semi-circular bony structure that forms the posterior edge of the gill opening. Measurement must be made at the point on the cleithrum that provides the shortest possible CK measurement. (See Figure 1.)

BILLING CODE 3510-22-M

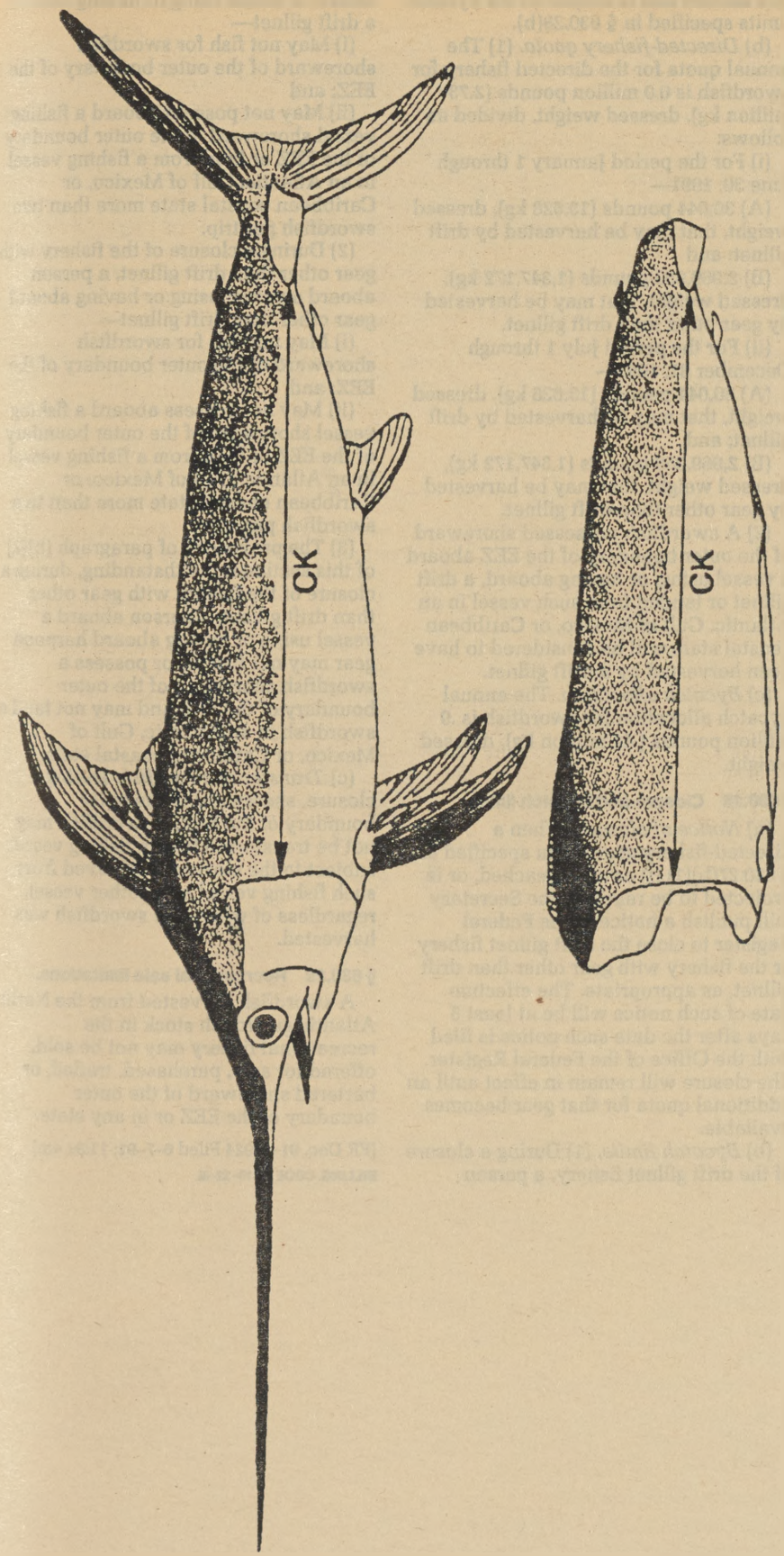

Figure 1. Cleithrum to keel (CK) measurement of swordfish.

BILLING CODE 3510-22-C

(b) *Trip allowance for undersized fish.* Swordfish smaller than the minimum size limit specified in paragraph (a) of this section may be landed in any trip from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state in an amount not exceeding 15 percent of the total number of swordfish landed in any trip. If the number representing 15 percent of the total number of swordfish landed contains a fraction of 0.5 or greater, then that fraction will be rounded to the nearest larger whole number; fractions less than 0.5 will be rounded to the nearest smaller whole number (e.g., if the 15 percent equals 4.5 fish, then this will be rounded to 5 fish; 4.4 fish will be rounded to 4 fish).

(c) *Carcass condition.* A swordfish possessed shoreward of the outer boundary of the EEZ must be in whole or dressed form, and a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state must be maintained in whole or dressed form through landing, except such swordfish as are damaged by shark bites. A shark-bit swordfish for which the remainder of the carcass is less than the minimum size limit specified in paragraph (a) of this section will be counted against the 15 percent trip allowance for undersized swordfish specified in paragraph (b) of this section.

§ 630.27 Quotas and allocations.

(a) *Applicability.* A swordfish harvested during 1991 from the North Atlantic swordfish stock by a vessel of the United States in other than the recreational fishery is counted against the directed-fishery gear quota or the bycatch allocation, as appropriate at the time of landing. A swordfish landed before the effective date of a gear closure, done pursuant to § 630.28(a), is counted against the applicable directed-fishery gear quota. After a gear closure, a swordfish landed by a vessel using such gear is counted against the bycatch allocation specified in paragraph (c) of this section and is subject to the bycatch limits specified in § 630.28(b).

(b) *Directed-fishery quota.* (1) The annual quota for the directed fishery for swordfish is 6.0 million pounds (2.73 million kg), dressed weight, divided as follows:

(i) For the period January 1 through June 30, 1991—

(A) 30,044 pounds (13,628 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 2,969,956 pounds (1,347,172 kg), dressed weight, that may be harvested by gear other than drift gillnet.

(ii) For the period July 1 through December 31, 1991—

(A) 30,044 pounds (13,628 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 2,969,956 pounds (1,347,172 kg), dressed weight, that may be harvested by gear other than drift gillnet.

(2) A swordfish possessed shoreward of the outer boundary of the EEZ aboard a vessel using, or having aboard, a drift gillnet or landed from such vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state will be considered to have been harvested by a drift gillnet.

(c) *Bycatch allocation.* The annual bycatch allocation for swordfish is .9 million pounds (.41 million kg), dressed weight.

§ 630.28 Closure and bycatch limits.

(a) *Notice of closure.* When a directed-fishery gear quota specified in § 630.27(b)(1) (i) or (ii) is reached, or is projected to be reached, the Secretary will publish a notice in the **Federal Register** to close the drift gillnet fishery or the fishery with gear other than drift gillnet, as appropriate. The effective date of such notice will be at least 5 days after the date such notice is filed with the Office of the Federal Register. The closure will remain in effect until an additional quota for that gear becomes available.

(b) *Bycatch limits.* (1) During a closure of the drift gillnet fishery, a person aboard a vessel using or having aboard a drift gillnet—

(i) May not fish for swordfish shoreward of the outer boundary of the EEZ; and

(ii) May not possess aboard a fishing vessel shoreward of the outer boundary of the EEZ or land from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state more than two swordfish per trip.

(2) During a closure of the fishery with gear other than drift gillnet, a person aboard a vessel using or having aboard gear other than drift gillnet—

(i) May not fish for swordfish shoreward of the outer boundary of the EEZ; and

(ii) May not possess aboard a fishing vessel shoreward of the outer boundary of the EEZ or land from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state more than two swordfish per trip.

(3) The provisions of paragraph (b)(2) of this section notwithstanding, during a closure of the fishery with gear other than drift gillnet, a person aboard a vessel using or having aboard harpoon gear may not fish for or possess a swordfish shoreward of the outer boundary of the EEZ and may not land a swordfish in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(c) *Transfer of swordfish.* During a closure, shoreward of the outer boundary of the EEZ, a swordfish may not be transferred from a fishing vessel subject to the closure or received from such fishing vessel by another vessel, regardless of where the swordfish was harvested.

§ 630.29 Recreational sale limitations.

A swordfish harvested from the North Atlantic swordfish stock in the recreational fishery may not be sold, offered for sale, purchased, traded, or bartered shoreward of the outer boundary of the EEZ or in any state.

[FR Doc. 91-13924 Filed 6-7-91; 11:34 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 113
Wednesday, June 12, 1991

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.

OFFICE OF PERSONNEL MANAGEMENT

52 CFR Part 930

RIN 3206-AD43

Training Requirement for the Computer Security Act

AGENCY: Office of Personnel Management.

ACTION: Proposed Regulation.

SUMMARY: This proposed regulation implements Public Law 100–235, the Computer Security Act of 1987, which requires training for all employees responsible for the management and use of Federal computer systems that process sensitive information. Under the proposed regulation agencies will be responsible for identifying the employees to be trained and providing appropriate training.

DATES: Comments will be considered if they are received on or before August 12, 1991.

ADDRESSES: Send or deliver written comments to: U.S. Office of Personnel Management, Human Resources Development Group, Office of Executive and Management Policy, PO Box 7559, Washington, DC 20044, Attn: Ms. Constance Guitian.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Guitian, (202) 632–9769.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management issued interim regulations on July 13, 1988 (53 FR 26562) to comply with the legal requirement for regulations within six months of the passage of the Computer Security Act. That Act also placed a secondary requirement on the training regulations to implement the "Computer Security Training Guidelines" which had not at that time been issued by the National Institutes of Standards and Technology (NIST).

Since the, NIST has released Special Publication 500–172, "Computer Security Training Guidelines." Three additional documents have been published which are designed to meet training needs of specific audiences: "The Executive Guide to the Protection of Information Resources"; "Management Guide to the Protection of Information Resources"; and "Computer User's Guide to the Protection of Information Resources." These guidelines are consistent with the interim regulations; but in order to discharge its full responsibility under the law, the Office of Personnel Management is proposing regulations that mirror the guidelines.

The proposed regulations provide a framework for determining the training needs by subject area of employees involved with computer systems that process sensitive information. Employees are grouped into five categories and the required level of training for each subject area is described. For information about the learning objective for each group of employees, consult the "Computer Security Training Guidelines" (NIST Special Publication 500–172).

The training outlined in these proposed regulations should be incorporated as much as possible into existing training programs rather than being a new or separate training program. For example, security awareness training could be included in orientation program for new employees. All training courses involved with automated information systems equipment and software packages could include modules on computer security responsibilities. As training for managers and supervisors is redesigned, it could include modules on computer security. In addition, agencies should explore non-classroom modes of delivery of training such as computer assisted training, video tapes, workbooks, job aids, and desk guides.

Although training is of vital importance to a security program, it is only part of a large information management system. Agency management needs to foster a work environment where information security is seen as critical to accomplishing the agency's mission.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions, because it will affect only Federal employees.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the Office of Personnel Management proposes to revise subpart to 5 CFR part 930 to read as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart C—Employees Responsible for the Management or Use of Federal Computer Systems

Sec.

Subpart C—Employees Responsible for the Management or Use of Federal Computer Systems

Authority: 40 U.S.C. 759 note.

§ 930.301 Definitions.

(a) The amount and type of training different groups of employees will receive will be distinguished by the following knowledge levels identified in the Computer Security Training Guidelines developed by the National Institute of Standards and technology:

(1) *Awareness level training* creates the sensitivity to the threats and vulnerabilities and the recognition of the need to protect data, information, and the means of processing them;

(2) *Policy level training* provides the ability to understand computer security principles so that executives can make informed policy decisions about their computer and information security programs;

(3) *Implementation level training* provides the ability to recognize and assess the threats and vulnerabilities to automated information resources so that the responsible managers can set security requirements which implement agency security policies; and

(4) *Performance level training* provides the employees with the skill to design, execute, or evaluate agency computer security procedures and

practices. The objective of this training is that employees will be able to apply security concepts while performing the tasks that related to their particular positions. It may require education in basic principles and training in state-of-the-art applications.

(b) Training audiences are groups of employees with similar training needs. Consistent with the Computer Security Training Guidelines, they are defined as follows:

(1) *Executives* are those senior managers who are responsible for setting agency computer security policy, assigning responsibility for implementing the policy, determining acceptable levels of risk, and providing the resources and support for the computer security program.

(2) *Program and Functional Managers* are those managers and supervisors who have a program or functional responsibility (not in the area of computer security) within the agency. They have primary responsibility for the security of their data. This means that they designate the sensitivity and criticality of data and processes, assess the risks to those data, and identify security requirements to the supporting data processing organization, physical facilities personnel, and users of their data. Functional managers are responsible for assuring the adequacy of all contingency plans relating to the safety and continuing availability of their data.

(3) *Information Resources Managers (IRM), Security, and Audit Personnel* are all involved with the daily management of the agency's information resources, including the accuracy, availability, and safety of these resources. Each agency assigns responsibility somewhat differently, but as a group these persons issue procedures, guidelines, and standards to implement the agency's policy for information security, and to monitor its effectiveness and efficiency. They provide technical assistance to users, functional managers, and to the data processing organization in such areas as risk assessment and available security products and technologies. They review and evaluate the functional and program groups' performance in information security.

(4) *Automated Data Processing (ADP) Management, Operations, and Programming Staff* are all involved with the daily management and operations of the automated data processing services. They provide for the protection of the data in their custody and identify to the data owners what those security measures are. This group includes such diverse positions as computer operators, schedulers, tape librarians, data base administrators, and systems and applications programmers. The provide the technical expertise for implementing security-related controls within the automated environment. They have primary responsibility for all aspects of contingency planning.

(5) *End Users* are any employees who have access to an agency computer system that processes sensitive information. This is the largest and most heterogeneous group of employees. It consists of everyone from the executive who has a personal computer with sensitive information to data entry clerks.

(c) The training guidelines developed by the National Institute of Standards and Technology identify five subject area. They are:

(1) *Computer security basics* is the introduction to the basic concepts behind computer security practices and the importance of the need to protect the information from vulnerabilities to known threats;

(2) *Security planning and management* is concerned with risk analysis, the determination of security requirements, security training, and internal agency organization to carry out the computer security function;

(3) *Computer security policies and procedures* looks at Governmentwide and agency-specific security practices in the areas of physical, personnel software, communications, data, and administrative security;

(4) *Contingency planning* covers the concepts of all aspects of contingency planning, including emergency response plans, backup plans and recovery plans. It identifies the roles and responsibilities of all the players involved; and

(5) *Systems life cycle management* discusses how security is addressed during each phase of a system's life cycle (e.g. system design, development, test and evaluation, implementation, and maintenance). It addresses procurement, certification, and accreditation.

(d) The statute defines the term *sensitive information* as any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

§ 930.302 Training requirement.

The head of each agency shall identify employees responsible for the management or use of computer systems that process sensitive information and provide the following training (consult "Computer Security Training Guidelines," NIST Special Publication 500–172 for more detailed information) to each of these groups:

(a) Executives shall receive awareness training in computer security basics, computer security policy and procedures, contingency planning, and systems life cycle management; and policy level training in security planning and management.

(b) Program and functional managers shall receive awareness training in computer security basics; implementation level training in security planning and management, and computer security policy and procedures; and performance level training in contingency planning and systems life cycle management.

(c) IRM, security, and audit personnel shall receive awareness training in computer security basics; and performance level training in security planning and management, computer security policies and procedures, contingency planning, and systems life cycle management.

(d) ADP management and operations personnel shall receive awareness training in computer security basics; and performance level training in security planning and management, computer security policies and procedures, contingency planning, and systems life cycle management.

(e) End users shall receive awareness training in computer security basics, security planning and management, and systems life cycle management; and performance level training in computer security policies and procedures, and contingency planning.

§ 930.303 Initial training.

The head of each agency shall provide the training outlined in § 930.302 of this part to all such new employees within 60 days of their appointment.

§ 930.304 Continuing training.

The head of each agency shall provide training whenever there is a significant change in the agency information security environment or procedures or when an employee enters a new position which deals with sensitive information.

§ 930.305 Refresher training.

Computer security refresher training shall be given as frequently as

determined necessary by the agency based on the sensitivity of the information that the employee uses or processes.

[FR Doc. 91-13993 Filed 6-11-91; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 801

RIN 0580-AA21

Official Performance Requirements for Grain Inspection Equipment

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is proposing to revise the regulations under the United States Grain Standards Act, as amended, concerning the Official Performance Requirements for Grain Inspection Equipment. FGIS plans to incorporate by reference, the applicable sections of the Grain Moisture Meters Code and General Code of the National Institute of Standards and Technology (NIST) Handbook 44, which is entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1991 edition (Handbook 44), into the regulations.

DATES: Comments must be submitted on or before August 12, 1991.

ADDRESSES: Comments must be submitted in writing to Allen A. Atwood, Federal Grain Inspection Service, USDA, room 0628 South Building, Box 96454, Washington, DC, 20090-6454; telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Allen A. Atwood, TLX: 7607351, ANS: FGIS UC; and telecopy users may respond to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Allen A. Atwood, address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Background and Proposal

Handbook 44 is recommended by the National Institute of Standards and Technology (NIST) and the National Conference on Weights and Measures (NCWM) for use by the States in exercising their control of commercial weighing and measuring apparatus. The Grain Moisture Meters Code, contained within Handbook 44, includes design specifications, tolerances for acceptance and maintenance testing, and user requirements associated with grain moisture meter use by the commercial sector. The General Code applies to all classes of commercial devices as covered in specific codes.

Incorporation of applicable sections of the Grain Moisture Meters Code and General Code is consistent with efforts to achieve greater uniformity of specifications and technical requirements for grain moisture determinations. Those provisions of Handbook 44 that did not pertain to or were not practical for moisture meters used in the official system were not included in the proposed incorporation by reference. FGIS proposes a revision to part 801 of the regulations, Official Performance Requirements for Grain Inspection Equipment, that would incorporate by reference the applicable requirements contained in the 1991 edition of the NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." Specifically, FGIS is proposing to add the applicable sections of Handbook 44 to part 801 by adding a new section 801.12 which is entitled "Design Requirements Incorporated by Reference."

List of Subjects in 7 CFR Part 801

Administrative practice and procedure, Export, Grain, Incorporation by reference.

For reasons set forth in the preamble, 7 CFR part 801 is proposed to be amended as follows:

1. The authority citation for part 801 continues to read as follows:

Authority: Pub.L. 94-582, 90 stat. 2867, as amended, (7 U.S.C. 71 *et seq.*)

2. It is proposed that Part 801 be amended to add § 801.12 that reads as follows:

* * * * *

§ 801.12 Design requirements incorporated by reference.

(a) *Moisture meters.* All moisture meters approved for use in official grain moisture determination and certification shall meet applicable requirements contained in the FGIS Moisture Handbook and the General Code and Grain Moisture Meters Code of the 1991 edition of the National Institute of Standards and Technology's (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." Pursuant to the provisions of 5 U.S.C. 552(a), the materials in Handbook 44 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**.

The NIST Handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. It is also available for inspection at the Office of the **Federal Register**, room 8401, 1100 "L" Street, NW., Washington, DC.

The following Handbook 44 requirements are not incorporated by reference:

General Code (1.10.)

G-S.5.5. Money Values, Mathematical Agreement
G-T.1. Acceptance Tolerances
G-UR.3.3. Position of Equipment
G-UR.3.4. Responsibility, Money-Operated Devices

Grain Moisture Meters (5.56.)

N.1.1. Transfer Standards
N.1.2. Minimum Test
N.1.3. Temperature Measuring Equipment
T.2. Tolerance Values
T.3. For Test Weight Per Bushel Indications or Recorded Representations
UR.3.2. Other Devices not used for Commercial Measurement
UR.3.7. Location
UR.3.11. Posting of Meter Operating Range

(b) Reserved for future use

Dated: May 6, 1991.

David R. Galliart,

Deputy Administrator.

[FR Doc. 91-13917 Filed 6-11-91; 8:45 am]
BILLING CODE 3410-EN-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 35

[Docket No. PRM-20-20]

Carol S. Marcus; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Commission is publishing for public comment a notice of receipt of a petition for rulemaking dated December 26, 1990, which was filed with the Commission by Dr. Carol S. Marcus. The petition was assigned Docket No. PRM-20-20 on February 6, 1991. The petitioner requests that the Commission revise its standards for protection against radiation to raise the annual radiation dose absorbed by individual members of the public from 1 mSv to 5 mSv (500 mrems).

DATES: Submit comments by August 12, 1991. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1990, the Nuclear Regulatory Commission (NRC) received a petition for rulemaking submitted by Dr. Carol S. Marcus. The petitioner requested amendments to the revised 10 CFR part 20 and 10 CFR part 35. Because the final rule for 10 CFR part 20 and conforming amendments had not been published in the **Federal Register**, Dr. Marcus agreed that the NRC delay docketing and providing public notice of the petition until the revised 10 CFR part 20 had been published as a final rule.

The NRC published on May 21, 1991 (56 FR 23360) the final rule that amended the standards for protection against radiation in 10 CFR part 20 and made conforming amendments to 10 CFR chapter I.[1] In the amendment to § 20.1301, the NRC states that each licensee shall conduct operations so that the total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 mSv) in a year, exclusive of the dose contribution from the licensee's disposal of radioactive material into sanitary sewerage in accordance with § 20.2003. The section further states that a licensee or license applicant may apply for prior NRC authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 mSv).

Petitioner's Request

The petitioner requests the NRC to revise 10 CFR parts 20 and 35 to—

(1) Raise the annual radiation dose limit that can be absorbed by members of the public from patients receiving radiopharmaceuticals for diagnosis or therapy from 1 mSv to 5 mSv (500 mrems);

(2) Delete the requirement that licensees have to comply with provisions of EPA's applicable environmental standards in addition to complying with the requirements of Part 20.

(3) Amend § 35.75 (a)(2) to retain the 30 mCi (1110 MBq) limit for I-131, but vary the maximum activity of other radionuclides consistent with the calculations methodology employed in NCRP Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides (NCRP, 1970)."

Reasons for Petition

Raise Public Absorbed Dose Limits

The petitioner states that reducing the level of absorbed dose to 1 mSv per year would be extremely expensive for members of the public and hospitalized patients. The petitioner states that in order that members of the public who are closest to the patient not receive more than 1 mSv per year, patients who are hospitalized would require hospitalization for longer times than they are now and many outpatients would have to be made inpatients. The petitioner questions the benefit to the public in reducing the dose to 1 mSv because no one has demonstrated any risk from chronic doses of 5 mSv per year. The petitioner points out that residents of portions of Colorado, who receive 2.5 mSv per year, and those in higher background areas, have never shown any adverse effects from those low levels of radiation. The petitioner states that because the new Part 20 continues to permit the embryo/fetus of a declared pregnant woman to accrue a dose of 5 mSv per 9 months; it would be scientifically consistent to permit certain members of the general public to do the same.

Dual Requirements

The petitioner recommends the deletion of § 20.1301(d) which requires that, in addition to the requirements of part 20, a licensee subject to the provisions of EPA's generally applicable environmental radiation standards in 40 CFR part 190 comply with those standards. According to the petitioner, EPA's radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAPS) [2] will become a national standard.[3] According to the petitioner, the more restrictive nature of EPA's standard would nullify the revised part 20. The petitioner states that NRC required adherence to EPA standards could cost $100,000,000 per year.

1110 MBq Limit

The petitioner states that the new § 20.1903 is scientifically inconsistent with the part 20 absorbed dose change in that it appears to have retained the concept of the 30 mCi (1110 MBq) limit expressed in § 35.75(a)(2). The petitioner further states that § 35.75(a)(2) is not scientifically sound because it refers to all radionuclides, instead of just I-131, for which the 30 mCi (1110 MBq) activity limit was originally intended. The petitioner requests that 30 mCi (1110 MBq) limit for I-131 be retained, but vary the maximum activity of other radionuclides consistent with the calculation methodology employed in NCRP No. 37.

Petitioner's Proposal

The petitioner proposes to retain the 30 mCi (1110 MBq) limit for I-131, vary the maximum activity of other radionuclides consistent with the calculation methodology employed in NCRP No. 37, and continue to permit

[1] The new standards for protection against radiation were redesignated prior to publication. The references to 10 CFR part 20 that were presented in the petition for rulemaking have been modified to reflect the section designations that appear in the final rule.

[2] The Commission notes that these are not the same standards as 40 CFR part 190.

[3] Implementation has been deferred by EPA.

members of the public to receive up to 5 mSv from patients. The petitioner also proposes to delete § 20.1301(d) because EPA's radionuclide NESHAPS will become a national standard, and its more restrictive nature would take the place of the airborne effluent limit in the amended part 20.

Conclusion

The petitioner states if this petition is granted, there will be zero-additional cost. The petitioner has included detailed economic impact calculations to support the technical basis for the petition.

Dated at Rockville, Maryland this 6th day of June, 1991.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–13970 Filed 6–11–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 331

[Docket No. 90N–0309]

Drug Labeling; Sodium Labeling for Over-the-Counter Drugs; Proposed Amendment; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 24, 1991, the period for submission of comments on the notice of proposed rulemaking for sodium labeling for over-the-counter (OTC) drug products. FDA is taking this action in response to a request to extend the comment period for an additional 30 days to allow more time to comment on this proposal.

DATES: Written comments by July 24, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 1991 (56 FR 19222), FDA issued a notice of proposed rulemaking to amend the general labeling provisions for OTC drug products to: (1) Require that the sodium content of all orally administered OTC drug products be included in labeling when the product contains 5 milligrams (mg) or more sodium per a single recommended dose; (2) require that orally administered OTC drug products containing more than 140 mg sodium in the maximum recommended daily dose be labeled with a general warning that persons who are on a sodium-restricted diet should not take the product unless directed by a doctor; and (3) provide for the voluntary use of certain descriptive terms relating to the product's sodium content. FDA issued the notice of proposed rulemaking in order to provide uniform sodium content labeling for all orally administered OTC drug products, and to provide for the voluntary use in OTC drug labeling of the same terms used to describe sodium content in food labeling. Interested persons were given until June 24, 1991, to submit comments on the proposal.

On May 24, 1991, the Nonprescription Drug Manufacturers Association (NDMA), a trade association, requested a 30-day extension to July 24, 1991, in which to file written comments. NDMA contended that the proposal is sweeping in nature, covering virtually all therapeutic classes of OTC drugs that are administered orally. NDMA added that the proposal also raises significant questions of science and policy that merit careful review. NDMA mentioned that it has established a committee to analyze the proposal, particularly the proposed new warning requirements. NDMA noted that antacids are already required to bear sodium labeling, including a warning; that there is no public health and safety urgency to close the comment period; and that a 30-day extension of time for comment would not delay completion of the agency's OTC drug review because the proposal would apply to all orally administered OTC drugs and would be included in the general labeling requirements of 21 CFR part 201, rather than in OTC drug review monographs.

FDA has carefully considered the request and believes that additional time for comment is in the public interest. The agency notes that NDMA intends to file comments to assist the agency. The agency believes that additional time will allow for more useful comments to be developed. Thus, the agency considers a limited extension of the comment period to be appropriate.

Interested persons may, on or before July 24, 1991, submit to the Dockets Management Branch (address above) written comments regarding sodium labeling of orally administered OTC drug products. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 7, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–13985 Filed 6–11–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Supplemental Insurance Plans

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This rule proposes to amend DoD 6010.8–R (32 CFR part 199) which implements the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The rule defines and limits the types of plans recognized as supplemental insurance coverage under CHAMPUS. The rule will also help provide guidance in identifying plans that would come under the CHAMPUS double coverage regulations.

DATES: Written public comments must be received on or before July 12, 1991.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado 80045–6900.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303)–361–3572.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. DoD 6010.8–R was revised and published in the **Federal Register** on July 1, 1986 (51 FR 24008).

Background

In compliance with applicable statutory provisions [10 U.S.C. 1079(j)(1) and 10 U.S.C. 1086(d)] on double coverage, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pays benefits only after all other health plans have made payment, with the exception of Medicaid and certain insurance policies that are specifically designed to supplement CHAMPUS benefits.

This means that if a CHAMPUS beneficiary has another health plan, the other plan must pay whatever it covers before CHAMPUS will make any type of payment. The CHAMPUS beneficiary may have coverage through an employer, an association, or a private insurer. This also includes any coverage students may obtain through schools.

In most circumstances, when the CHAMPUS beneficiary's other plan has paid its maximum benefits, then CHAMPUS will pay for covered services up to the amount it would have paid, had there been no other health benefits plan involved.

This proposed rule defines and limits the types of plans recognized as supplemental insurance coverage under CHAMPUS. The rule will also help provide guidance in identifying plans that would come under the CHAMPUS double coverage provisions.

CHAMPUS has experienced difficulty because some other health insurance plans attempt to circumvent the statutory provision which makes them primary payer to CHAMPUS. Most often this has been through insurance policy provisions which attempt to characterize the policy as "supplemental" to CHAMPUS.

These attempts make clear a need for CHAMPUS to take some affirmative action to clarify and enforce the statutory second pay status. This proposed rule will assist CHAMPUS beneficiaries and providers and other third-party payers by stating what is recognized as a supplemental plan. The regulation provision provides that "coverage specifically designed to supplement CHAMPUS benefits" is not included as a double coverage plan. This provision lacks the specificity needed in light of the attempts by other insurance plans to put themselves into a second pay status by merely defining themselves to be supplemental to CHAMPUS even though their coverage may not be limited to CHAMPUS beneficiaries.

Provisions of the Proposed Rule

In order to implement this clarification, we propose to amend 32 CFR part 199. The proposed revisions are designed to conform the regulations to the provisions of chapter 55, title 10, U.S.C. 1079(j)(1) and to make minor clarifications. The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges. Below we discuss the existing regulations and the proposed clarification:

Presently, § 199.2(b) does not include a definition of a supplemental insurance plan. Therefore, we propose the following definition:

Supplemental insurance plan. A health insurance policy or other health benefit plan that a private entity offers to a CHAMPUS beneficiary; and that is primarily designed, advertised, marketed, or otherwise held out as providing payment for expenses incurred for services and items that are not reimbursed under CHAMPUS because of deductibles, coinsurance, or other limitations under CHAMPUS. A supplemental insurance plan must meet all of the following criteria:

(i) It provides insurance coverage, regulated by state insurance agencies, which is available only to beneficiaries of CHAMPUS.

(ii) It is premium based and all premiums relate only to the CHAMPUS supplemental coverage.

(iii) Its benefits for all covered beneficiaries are predominately limited to noncovered CHAMPUS services and/or to the deductible and cost-share portions of the CHAMPUS-determined allowable charges.

(iv) It provides insurance reimbursement by making payment directly to the CHAMPUS beneficiary or participating provider.

(v) It does not operate in a manner which results in an overall reduction or waiver of CHAMPUS deductibles or cost-shares.

Currently, § 199.8(b)(3)(ii) provides as one of the exceptions to the double coverage provisions, coverage specifically designed to supplement CHAMPUS benefits. To qualify as supplemental insurance, we are proposing such insurance must meet the definition and criteria under supplemental insurance plan proposed for § 199.2(b) of this Part.

Regulatory Impact

We have determined that this amendment only involves clarification of existing CHAMPUS regulation by clarifying the types of plans considered to be supplemental plans for purpose of enforcement of the CHAMPUS statutory second pay status. Accordingly, the Secretary certifies pursuant to section 605(b) of title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under the Executive Order 12291.

This amendment is being published in the **Federal Register** for proposed rule making at the same time it is being coordinated within the Department of Defense and with other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1.The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. Section 199.2 is proposed to be amended by adding a definition for "supplemental insurance plan" in the proper alphabetical order to paragraph (b) to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Supplemental insurance plan. A health insurance policy or other health benefit plan that a private entity offers to a CHAMPUS beneficiary; and that is primarily designed, advertised, marketed, or otherwise held out as providing payment for expenses incurred for services and items that are not reimbursed under CHAMPUS because of deductibles, coinsurance, or other limitations under CHAMPUS. A supplemental insurance plan must meet all of the following criteria:

(i) It provides insurance coverage, regulated by state insurance agencies, which is available only to beneficiaries of CHAMPUS.

(ii) It is premium based and all premiums relate only to the CHAMPUS supplemental coverage.

(iii) Its benefits for all covered beneficiaries are predominately limited to noncovered CHAMPUS services and/or to the deductible and cost-share

portions of the CHAMPUS-determined allowable charges.

(iv) It provides insurance reimbursement by making payment directly to the CHAMPUS beneficiary or participating provider.

(v) It does not operate in a manner which results in an overall reduction or waiver of CHAMPUS deductibles or cost-shares.

* * * * *

3. Section 199.8 is proposed to be amended by revising paragraph (b)(3)(ii) to read as follows:

§ 199.8 Double coverage.

* * * * *

(b) * * *

(3) * * *

(ii) Coverage specifically designed to supplement CHAMPUS benefits (a health insurance policy or other health benefit plan that meets the definition and criteria under supplemental insurance plan as set forth in § 199.2(b);

* * * * *

Dated: June 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13903 Filed 6-11-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-91-016]

Drawbridge Operation Regulations; Danvers River, MA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Massachusetts Department of Public Works (MDPW), the Coast Guard is considering a change to the regulations governing the Beverly-Salem SR1A Bridge and the Massachusetts Bay Transportation Authority (MBTA)/ AMTRAK Bridge both between Beverly and Salem, Massachusetts, at mile 0.0 and mile 0.05 respectively, and the Essex County Kernwood bridge between Peabody and Beverly, Massachusetts, at mile 1.0, all over the Danvers River, by permitting the draw of the SR1A Bridge to remain closed during the morning and evening rush hours, discontinuing the noon closure, and by revising the hours when advance notice for an opening is required at all three bridges. This proposal is being made because periods of peak vehicular traffic have changed. This action should accommodate the needs of vehicular traffic, continue to relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before 30 August 1991.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at the above address or the John Foster Williams Building, 408 Atlantic Ave., Boston, Massachusetts 02210-2209. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to these offices.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope.

A Notice of Final Temporary Rulemaking (CGD1-91-065) has been prepared and appears in the Final Rule Section of this Federal Register. The final temporary regulation is published in accordance with 33 CFR 117.43, in order to evaluate the drawbridge operating requirements during the prime recreational boating season. The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received or data collected.

Drafting Information

The drafters of this proposal are John McDonald, Project Officer, and Lieutenant John Gately, project attorney.

Discussion of Proposed Regulations

The SR1A, the MBTA/AMTRAK and the Essex County Kernwood bridges provides a vertical clearance of 19', 12' and 17' at MHW and 10', 3' and 8' at MLW, respectively. The current regulations require that the bridges open on signal; except that from 12 a.m. to 8 a.m. the draws shall open as soon as possible after notice is given, and the SR1A bridge need not be opened between 11:30 a.m. and 1 p.m. from June 1 through October 31. The proposed regulations for these bridges are that the draws open on signal except that from 12 a.m. to 5 a.m. daily and all day December 25 and January 1, the draws shall open as soon as possible after notice is given. Additionally, that the draw of the SR1A bridge, need not open from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday thru Friday, except federal holidays for the passage of recreational vessels. Commercial vessels, public vessels of the United States, state and local vessels used for public safety or vessels in an distress shall be passed as soon as possible at anytime.

The number of vessel transits and bridge opening have increased from approximately 1,500 in 1978 to about 3,600 openings in 1988. A majority of these openings occur from the end of May until 31 October and range from about 350 to 650 openings per month. Vehicular traffic during the morning and evening rush hours ranges from about 1,900 to 2,600 vehicles per hour.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the regulation will not prevent the mariners from transiting the bridge but require advance notice for openings and scheduling of transits. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.595 is revised and Appendix A to Part 117 is amended to revise the entries for the Danvers River under the State of Massachusetts to read as follows:

§ 117.595 Danvers River.

(a) The following requirements apply to all bridges across the Danvers River:

(1) Public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of paragraph 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (d) through (e) of this section, the draws shall open on signal.

(b) The draw of the Beverly-Salem SR1A Bridge, mile 0.0 between Salem and Beverly, MA shall operate as follows:

(1) The draw shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible after notice is given to the drawtenders either at the bridge during the time the operators are on duty or by calling the advance notice telephone number posted.

(2) Except as provided in paragraph (a)(1) of this section, the draw need not be opened Monday through Friday, except federal holidays, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m.

(c) The draws of the Massachusetts Bay Transit Authority (MBTA)/Amtrak Bridge at mile 0.05 between Salem and Beverly and the Essex County Kernwood bridge at mile 1.0 between Peabody and Beverly, MA, shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible after notice is given to the drawtenders either at the bridge during the time the operators are on duty or by calling the advance notice telephone number posted.

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
*	*	*	*	*		
Massachusetts						
*	*	*	*	*		
Danvers River	0.0	Beverly/Salem	SR1A, MDPW	pending	16	13
	0.05	Beverly/Salem	MBTA/AMTRAK, MBTA/AMTRAK	WRD 625	16	13
	1.0	Peabody/Beverly	ESSEX County, Kernwood, MDPW	pending	16	13
*	*	*	*	*		

Dated: May 30, 1991.

P.L. Collom,

Capt. USCG, Commander, First Coast Guard District, Acting.

[FR Doc. 91-13562 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 910514-1114]

RIN 0651-AA49

Patent Interference Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend its rules of practice in patent interference cases. The U.S. District Court for the District of Columbia recently decided *Kochler* v. Mustonen, Civil Action No. 90–1074 (D.D.C. Apr. 23, 1991). The District Court held that PTO practice regarding taking of testimony abroad was not clear. PTO rules require that a testimony period be set. The rules also require that testimony be taken during the testimony period. Rule 684 authorizes testimony to be taken abroad. However, Rule 684 requires that a motion be filed for leave to take testimony abroad and that the motion be filed before the close of a party's testimony period. The District Court suggested that a motion to take testimony abroad, filed in PTO on the last day of the testimony period, could be considered timely even though taking of the testimony might occur after the testimony period. By this notice, PTO proposes to continue to authorize the filing of a motion to take testimony abroad. However, a party would have to file the motion within a time such that the testimony could be taken during the testimony period set under PTO Rule 651.

DATES: Comments must be submitted on or before July 12, 1991. A public hearing will not be held.

ADDRESSES: Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Fred E. McKelvery, Solicitor. Written comments will be available for public inspection in Suite 918, on the 9th floor of Crystal Park II, located at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey by telephone at (703) 557–4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The PTO conducts interference proceedings to determine who as between two or more

applicants for patent or one or more applicants and one or more patentees is the first inventor of a patentable invention. As part of its proofs in an interference, a party may request leave to take testimony abroad. 37 CFR 1.684 (1990).

The U.S. District Court for the District of Columbia recently decided *Kochler* v. *Mustonen*, Civil Action No. 90–1074 (D.D.C. Apr. 23, 1991). The District Court held that PTO practice regarding taking of testimony abroad was not clear. PTO rule 651 (37 CFR 1.651 (1990)) requires that a testimony period be set. Rule 651 also requires that testimony be taken during the testimony period. Rule 684 (37 CFR 1.684 1990)) authorizes testimony to be taken abroad. However, Rule 684 requires that a motion be filed for leave to take testimony abroad and that the motion be filed before the close of a party's testimony period. The District Court suggested that a motion to take testimony abroad, filed in PTO on the last day of the testimony period, could be considered timely even though taking of the testimony might occur after the testimony period. By this notice, PTO proposes to continue to authorize the filing of a motion to take testimony abroad. However, a party would have to file the motion within a time such that the testimony could be taken during the testimony period set under PTO Rule 651.

If the changes proposed herein are ultimately adopted, it is anticipated that the Examiner-in-Chief assigned to an interference would specify in an order setting testimony when a motion to take testimony abroad (§ 1.684) would have to be filed. In the absence of setting of a specific time by the Examiner-in-Chief, the motion would have to be filed promptly after a testimony period is set so that it could be acted upon and testimony taken and completed within the testimony period. The rules, as proposed to be amended, would continue the policy announced in *Ziegler* v. *Baxter* v. *Natta*, 157 USPQ 432 (Comm'r Pat. 1968) (motion to take testimony abroad must be promptly filed after testimony period is set).

Section 1.651(a) is proposed to be revised by adding to the end of subsection (a) the language "(testimony includes testimony to be taken abroad under § 1.684)." This language would make clear the fact that testimony includes testimony which might be taken abroad.

Section 1.651(d) is proposed to be revised by adding (1) the language "including any testimony to be taken abroad under § 1.684," (2) the language "and completed," and (3) the sentence "a party seeking to extend the period for taking testimony must comply with § 1.635 and § 1.645(a)." This language and sentence would make clear that a party would have to complete all testimony within the testimony period and would need to move to extend the testimony period if sufficient time was not available to complete all testimony, which would include testimony to be taken abroad. The period would be extended only if the party made the showing required by § 1.645(a).

Section 1.684 is proposed to be revised by (1) deleting from paragraph (a) the language "prior to the close of the party's appropriate testimony period or within such time as may be set by an examiner-in-chief," (2) adding the language "promptly after the testimony period is set," and (3) adding to paragraph (a) the language "taking of testimony abroad must be completed within the testimony period set under § 1.651." The effect of these changes would be to require a motion to take testimony abroad to be filed within sufficient time to be acted upon and testimony taken abroad within the testimony period.

Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to clarify the need for taking testimony abroad during the testimony period. The proposed rule changes include no additional or increased fees. Substantive rights are not adversely affected.

The Office has determined that these proposed rule changes are not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. Because most of the proposed changes do not change burdens, there will be no major increase in costs or prices for consumers; individual industries; Federal, state or local government agencies; or geographic regions. There will be no significant productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule change will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12312.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents.

PART 1—RULES OF PRACTICE IN PATENT CASES

For the reasons set out in the preamble, it is proposed to amend 37 CFR part 1 wherein removals are indicated by brackets ([]) and additions by arrows (►◄):

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.651 is proposed to be revised as follows:

§ 1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.

(a) At an appropriate stage in an interference, an examiner-in-chief shall set (1) a time for filing motions (§ 1.635) for additional discovery under § 1.687(c) and (2) testimony periods for taking any necessary testimony ►(testimony includes testimony to be taken abroad under § 1.684)◄.

(b) Where appropriate, testimony periods will be set to permit a party to:

(1) Present its case-in-chief and/or case-in-rebuttal and/or

(2) Cross-examine an opponent's case-in-chief and/or a case-in-rebuttal.

(c) A party is not entitled to take testimony to present a case-in-chief unless:

(1) The examiner-in-chief orders the taking of testimony under § 1.639(c);

(2) The party alleges in its preliminary statement a date of invention prior to the earlier of the filing date or effective filing date of the senior party;

(3) A testimony period has been set to permit an opponent to prove a date of invention prior to the earlier of the filing date or effective filing date of the party

and the party has filed a preliminary statement alleging a date of invention prior to that date; or

(4) A motion (§ 1.635) is filed showing good cause why a testimony period should be set.

(d) Testimony ►, including any testimony to be taken abroad under § 1.684,◄ shall be taken ► and completed ◄ during the testimony periods set under paragraph (a) of this section. ► A party seeking to extend the period for taking testimony mut comply with § 1.635 and § 1.645(a). ◄

3. Section 1.684 is proposed to be revised as follows:

§ 1.684 Testimony in a foreign country.

(a) An examiner-in-chief may authorize testimony of a witness to be taken in a foreign country. A party seeking to take testimony in a foreign country shall, [prior to the close of the party's appropriate testimony period or within such time as may be set by an examiner-in-chief,] ► promptly after the testimony period is set, ◄ file a motion (§ 1.635):

(1) Naming the witness.

(2) Describing the particular facts to which it is expected that the witness will testify.

(3) Stating the grounds on which the moving party believes that the witness will so testify.

(4) Demonstrating that the expected testimony is relevant.

(5) Demonstrating that the testimony cannot be taken in this country at all or cannot be taken in this country without hardship to the moving party greatly exceeding the hardship to which all opposing parties will be exposed by the taking of the testimony in a foreign country.

(6) Accompanied by an affidavit stating that the motion is made in good faith and not for the purpose of delay or harassing any party.

(7) Accompanied by written interrogatories to be asked of the witness.

(b) Any opposition under § 1.638(a) shall state any objection to the written interrogatories and shall include any cross-interrogatories to be asked of the witness. A reply under § 1.638(b) may be filed and shall be limited to stating any objection to any cross-interrogatories proposed in the opposition.

(c) If the motion is granted, ► taking of testimony abroad must be completed within the testimony period set under § 1.651. ◄ [the] ► The ◄ moving party shall be responsible for obtaining answers to the interrogatories and cross-interrogatories before an officer qualified to administer oaths in the foreign country under the laws of the United States or the foreign country. The officer shall prepare a transcript of the interrogatories, cross-interrogatories, and recorded answers to the interrogatories and cross-interrogatories and shall transmit the transcript to BOX INTERFERENCE, Commissioner of Patents and Trademarks, Washington, DC 20231, with a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before answering the interrogatories and cross-interrogatories.

(2) The recorded answers are a true record of the answers given by the witness to the interrogatories and cross-interrogatories.

(3) The name of the person by whom the answers were recorded and, if not recorded by the officer, whether the answers were recorded in the presence of the officer.

(4) The presence or absence of any party.

(5) The place, day, and hour that the answers were recorded.

(6) A copy of the recorded answers was read by or to the witness before the witness signed the recorded answers and that the witness signed the recorded answers in the presence of the officer. The officer shall state the circumstances under which a witness refuses to read or sign recorded answers.

(7) The officer is not disqualified under § 1.674.

(d) If the parties agree in writing, the testimony may be taken before the officer on oral deposition.

(e) A party taking testimony in a foreign country shall have the burden of proving that false swearing in the giving of testimony is punishable as perjury under the laws of the foreign country. Unless false swearing in the giving of testimony before the officer shall be punishable as perjury under the laws of the foreign country where testimony is taken, the testimony shall not be entitled to the same weight as testimony taken in the United States. The weight of the testimony shall be determined in each case.

Dated: May 7, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-13850 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD89

Reservists Education; The Veterans' Benefits Programs Improvement Act and the Montgomery GI Bill

AGENCY: Department of Veterans Affairs, Department of Defense and Coast Guard, Department of Transportation.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect the Montgomery GI Bill—Selected Reserve. These include liberalizing the eligibility requirements for this program; providing less than half-time training under this program and liberalizing the standards for determining extension to a reservist's basic period of eligibility. A few of the amended regulations needed to implement this law were proposed in the **Federal Register** dated November 17, 1989, on pages 47785 to 47790. This proposal will acquaint the public with the way in which the Department of Veterans Affairs (VA) will administer the remaining provisions of law.

DATES: Comments must be received on or before July 12, 1991. Comments will be available for public inspection until July 22, 1991. It is proposed to make the revisions to these regulations and the new regulations contained in this proposal effective on the same date as the provisions of law on which they are based. Consequently, it is proposed to make the revisions to 38 CFR 21.7520(b)(14) and 21.7639(b) retroactively effective on June 1, 1989. It is proposed to make the revisions to all other regulations retroactively effective on November 18, 1988.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 22, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for

Policy and Program Administration, Education Service, Veterans Benefits Administration (202) 233–2092.

SUPPLEMENTARY INFORMATION: The Department of Defense, the Department of Transportation and the Department of Veterans Affairs are proposing to amend various regulations in order to implement several provisions of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100–689) which affect the Montgomery GI Bill—Selected Reserve. These provisions provide for less than half-time training in this program; liberalize the eligibility requirements for this program; provide new rules for determining when VA will consider the circumstances surrounding a reservist's withdrawal from courses to be mitigating; and provide that the disabling effects of chronic alcoholism will not be considered to be the result of willful misconduct when VA determines whether or not a reservist is entitled to an extension of the period of eligibility due to a service-connected disability.

The Department of Defense, Department of Transportation and the Department of Veterans Affairs have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Defense, the Secretary of Transportation and the Secretary of Veterans Affairs have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 12.609.

List of Sublects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 21, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: May 9, 1990.

Albert V. Conte,

Deputy Assistant Secretary of Reserve Affairs (Manpower & Personnel).

Approved: October 3, 1990.

John N. Faigle,

RADM, U.S. Coast Guard Chief, Office of Readiness and Reserve.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21 is proposed to be amended as follows:

1. In § 21.7520, paragraph (b)(14) and its authority citation are revised, and paragraph (b)(29) is added to read as follows:

* * * * *

§ 21.7520 Definitions.

* * * * *

(b) * * *

(14) *Mitigating circumstances.* (i) Mitigating circumstances are circumstances beyond the reservist's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the reservist,

(B) An illness or death in the reservist's family,

(C) An unavoidable change in the reservist's conditions of employment,

(D) An unavoidable geographical transfer resulting from the reservist's employment,

(E) Immediate family or financial obligations beyond the control of the reservist which require him or her to suspend pursuit of the program of education to obtain employment,

(F) Discontinuance of the course by the educational institution,

(G) Unanticipated active duty military service, including active duty for training, and

(H) Unanticipated difficulties in providing for child care for the reservist's child or children.

(ii) If a reservist withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating.

(iii) In the first instance of a withdrawal after May 31, 1989, from a course or course for which the reservist received educational assistance under chapter 106, title 10, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider courses dropped during an educational institution's drop-add period as provided in paragraph (b)(14)(ii) of this section.

(Authority: 38 U.S.C. 1434, 1780(a)(1), Pub. L. 100–689) (June 1, 1989)

* * * * *

(29) *Disabling effects of chronic alcoholism.*

(i) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case,—

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a reservist as a proximate and immediate result of activity undertaken by the reservist while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1431(d); Pub. L. 100–689) (Nov. 18, 1988)

2. In § 21.7540, paragraph (a)(2) is revised and the authority citation for paragraph (a) is revised to read as follows:

§ 21.7540 Eligibility for educational assistance.

(a) * * *

(2) Completes the requirements of a secondary school diploma (or an equivalency certificate). This must be accomplished either—

(i) Before completing the initial active duty for training, or

(ii) In the case of a reservist who establishes eligibility either through reenlistment or an extension of an enlistment, at any time before that

reenlistment or extension of an enlistment;

* * * * *

(Authority: 38 U.S.C. 1433(c), 10 U.S.C. 2132; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689) (November 18, 1988)

* * * * *

3. In § 21.7550, paragraph (a) introductory text and the authority citation for paragraph (a) are revised, and paragraph (c) is added to read as follows:

§ 21.7550 Ending dates of eligibility.

(a) *Time limit of eligibility.* Except as provided in § 21.7551 and paragraphs (b) and (c) of this section, a reservist's period of eligibility expires effective the earlier of the following dates:

* * * * *

(Authority: 10 U.S.C. 2133; Pub. L. 100–689) (November 18, 1988)

* * * * *

(c) *Discharge for disability.* In the case of a reservist separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct and which was incurred on or after the date on which the reservist became entitled to educational assistance, the reservist's period of eligibility expires effective the last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance.

(Authority: 10 U.S.C. 2133(b); Pub. L. 100–689) (November 18, 1988)

4. In § 21.7551, paragraph (a)(2) and the authority citation are revised to read as follows:

§ 21.7551 Extended period of eligibility.

(a) * * *

(2) The Individual was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period, because of a physical or mental disability, which is not the result of the reservist's own willful misconduct, and which was incurred in or aggravated by, service in the Selected Reserve. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. (See § 21.7520(b)(29)). Evidence must establish that such a program of education was medically infeasible. VA will not grant a reservist an extension for a period of disability which was 30 days or less unless the evidence establishes that the reservist was prevented from enrolling or reenrolling in the chosen program, or was forced to discontinue attendance, because of the short disability.

(Authority: 10 U.S.C. 2133(b)(2), 38 U.S.C. 105, 1431(d); Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

* * * * *

5. In § 21.7635, paragraphs (c) and (d) and their authority citations are revised to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(c) *Reduction in the rate of pursuit of the course.* (1) If the reservist reduces training by withdrawing from part of a course with mitigating circumstance, but continues training in part of the course, VA will reduce the reservist's educational assistance at the end of the month or the end of the term in which the withdrawal occurs, whichever is earlier; except, VA will reduce educational assistance effective the first date of the term in which the reduction occurs, if the reduction occurs on that date.

(2) If the reservist reduces training by withdrawing from a part of a course, without mitigating circumstances, while continuing to train in part of the course, VA will reduce the reservist's educational assistance effective the first date of the enrollment in which the reduction occurs.

(3) A reservist, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of § 21.7640(b) are met. If those requirements are not met, VA will reduce the reservist's educational assistance effective the date the subject or subjects were completed.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

(d) *Nonpunitive grade.* (1) If the reservist receives a nonpunitive grade in a particular course, for any reason other than a withdrawal from it, VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies when no mitigating circumstances are found.

(2) If the reservist receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, VA will reduce the reservist's educational assistance effective the last date of attendance when mitigating circumstances are found.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

* * * * *

6. In § 21.7636, paragraphs (a)(2) and (a)(3) are revised, paragraph (a)(4) is added, and the authority citation appearing at the end of paragraph (a) is revised to read as follows:

§ 21.7636 Rates of payment.

(a) * * *

(2) $105 per month for each month of three-quarter-time pursuit of a program of education;

(3) $70 per month for each month of half-time pursuit of a program of education; and

(4) $35 per month for each month of less than half-time pursuit of a program of education.

(Authority: 10 U.S.C. 21311(b); Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

* * * * *

7. In § 21.7636, paragraph (b)(1) is removed, paragraphs (b)(2) through (b)(6) are redesignated as paragraphs (b)(1) through (b)(5), and the authority citation appearing at the end of paragraph (b) is revised to read as follows:

* * * * *

(Authority: 10 U.S.C. 2131(b), 2136(b), 38 U.S.C. 1780; Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

8. In § 21.7639, paragraph (b) and its authority citation are revised, and paragraph (c) introductory text is amended by removing the word "incarcervists" in the first sentence and adding, in its place, the word "incarcerated" to read as follows:

§ 21.7639 Conditions which result in reduced rates.

* * * * *

(b) *Withdrawals and nonpunitive grades.* (1) Withdrawal from a course or receipt of a nonpunitive grade may reduce the amount of educational assistance paid to a reservist. VA is not authorized to pay benefits to a reservist for a course from which the reservist receives a nonpunitive grade which is not used in computing the requirements for graduation or from which he or she withdraws unless—

(i) There are mitigating circumstances; and

(ii) The reservist submits a description of the circumstances in writing to VA within 1 year from the date VA notifies the reservist that he or she must submit the description of the mitigating circumstances; and

(iii) The reservist submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA.

(2) If VA considers that mitigating circumstances exist because the reservist withdrew during a drop-add

period or because the withdrawal constitutes the first withdrawal of no more than six credits after May 31, 1989, the reservist is not subject to the reporting requirement found in paragraph (b)(1)(ii) of this section.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a)) (Jun. 1, 1989)

* * * * *

9. In § 21.7670, paragraphs (a)(2) and (a)(3) are revised, paragraph (a)(4) is added, and the authority citation appearing at the end of paragraph (a) is revised; paragraphs (b)(2)(i) and (b)(2)(ii) are revised, paragraph (b)(2)(iii) is added, and the authority citation appearing at the end of paragraph (b) is revised; paragraphs (c)(2)(i) and (c)(2)(ii) are revised, paragraph (c)(2)(iii) is added, and the authority citation appearing at the end of paragraph (c) is revised; so the revised and added text reads as follows:

§ 21.7670 Measurement of courses leading to a standard college degree.

* * * * *

(a) * * *

(2) 10 through 13 semester hours or the equivalent are three-quarter-time training;

(3) 7 through 9 semester hours or the equivalent are half-time training; and

(4) 1 through 6 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1788(a); Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

(b) * * *

(2) * * *

(i) 10 through 12 semester hours or the equivalent are three-quarter-time training;

(ii) 7 through 9 semester hours or the equivalent are half-time training; and

(iii) 1 through 6 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1788(a); Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

(c) * * *

(2) * * *

(i) 9 through 11 semester hours or the equivalent are three-quarter-time training;

(ii) 6 through 8 semester hours or the equivalent are half-time training; and

(iii) 1 through 5 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1788(a); Pub. L. 98–525, Pub. L. 100–689)

* * * * *

[FR Doc. 91–13787 Filed 6–11–91; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–7023]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevators. Even if ordinances are adapted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67.

Flood Insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority. 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
LOUISIANA	
Minden (city), Webster Parish	
Mile Creek:	
At downstream corporate limits	*173
At State Route 3008	*209
Mile Creek Tributary:	
At confluence with Mile Creek	*195
Approximately 250 feet downstream of State Route 159	*237
Maps available for inspection at the City Hall, 520 Broadway, Minden, Webster Parish, P.O. Box 580, Minden, Louisiana 71058.	
MINNESOTA	
Duluth Township, St. Louis County	
Lake Superior:	
Within community	*605
Maps available for inspection at the Township Hall, Duluth, Minnesota.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Richard Bakke, Chairperson, Township of Duluth, Township Hall, Duluth, Minnesota 55804.	
St. Louis County (unincorporated areas)	
St. Louis River:	
At confluence of East Savanna River	*1,244
About 2250 feet upstream of County Highway 8	*1,246
Floodwood River:	
At confluence with St. Louis River	*1,245
About 1.6 miles upstream of County Road 835	*1,246
East Savanna River:	
At confluence with St. Louis River	*1,244
About 1000 feet upstream of U.S. Highway 2	*1,245
Lake Superior:	
Within community	*605
Maps available for inspection at the County Zoning Office, c/o Health Department, 1001 East 1st Street, Duluth, Minnesota, and County Zoning Office, Northland Office Center, 307 South 1st Street, Virginia, Minnesota.	
Send comments to The Honorable William Kron, Chairman, Board of Commissioners, St. Louis County, 100 North 5th Avenue, West, Duluth, Minnesota 55802.	
NEW YORK	
Arcade (town), Wyoming County	
Cattaraugus Creek:	
Most downstream corporate limits (county boundary)	*1,394
Approximately 0.7 mile upstream of East Arcade Road	*1,537
Clear Creek:	
Downstream corporate limits	*1,499
Upstream corporate limits	*1,532
Clear Creek Tributary:	
Downstream corporate limits	*1,500
Upstream corporate limits	*1,582
Maps available for inspection at the Town Hall, Route 98N, Arcade, New York.	
Send comments to Mr. Howard Payne, Supervisor of the Town of Arcade, Wyoming county, 15 Liberty Street, Arcade, New York 14009.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arcade (village), Wyoming County	
Cattaraugus Creek:	
Approximately 100 feet downstream of the downstream corporate limits	*1,411
Approximately 820 feet upstream of the upstream corporate limits	*1,491
Clear Creek:	
At its confluence with Cattaraugus Creek	*1,479
At the upstream corporate limits	*1,499
Haskell Creek:	
At its confluence with Clear Creek	*1,484
Approximately 0.7 mile upstream of the Arcade and Attica Railroad culvert	*1,612
Maps available for inspection at the Village Hall, 17 Church Street, Arcade, New York.	
Send comments to The Honorable James J. Luscher, Mayor of the Village of Arcade, Wyoming County, 17 Church Street, Arcade, New York 14009.	
Jackson (town), Washington County	
Batten Kill:	
Approximately 1,950 feet downstream of Ray Road	*349
Approximately 3 miles upstream of County route 61	*410
Maps available for inspection at the Jackson Town Hall, R.D. 1 Cambridge, New York.	
Send comments to Mr. John Rich, Supervisor of the Town of Jackson, Washington County, Box D, Shushan, New York 12873.	
Saranac (town), Clinton County	
Saranac River:	
Approximately 750 feet downstream of Douquette Road	*736
Approximately 2.2 miles upstream of Ore Bed Road	*1,109
Maps available for inspection at the Town Hill, New York State Route 3, Saranac, New York.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to Mr. Ken Davies, Saranac Town Supervisor, Clinton County, P.O. Box 817, Saranac, New York 12981.	
NORTH CAROLINA	
Apex (Town), Wake County	
Middle Creek (Basin 22—Stream 1):	
About 1.64 miles upstream of SR 1301	*372
About 2.35 miles upstream of SR 1301	*380
Beaver Creek (Basin 27-Stream 2):	
At confluence of Basin 27-Stream 4	*283
Just downstream of U.S. Route 64	*314
Just upstream of U.S. Route 64	*319
Just downstream of State Route 55	*320
Just upstream of State Route 55	*325
Just downstream of SR 1611	*354
Basin 27—Stream 4:	
At mouth	*283
About 2,130 feet upstream of mouth	*295
Maps available for inspection at the Town Hall, Apex, North Carolina.	
Send comments to The Honorable Steven Stewart, Town Manager, Town of Apex, P.O. Box 250, Apex, North Carolina 27502.	
Holly Springs (town), Wake County	
Middle Creek (Basin 22—Stream 1:	
Just upstream of SR 1301 (near dam)	*306
Just upstream of dam	*312
About 300 feet downstream of SR 1301	*348
Basal Creek (Basin 22—Stream 16):	
Along shoreline of Sunset Lake	*312
Maps available for inspection at the Town Hall, Holly Springs, North Carolina.	
Send comments to The Honorable Gerald Holleman, Mayor, Town of Holly Springs, P.O. Box 8, Holly Springs, North Carolina 27540.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Massachusetts	Grafton, town, Worcester County.	Quinsigamond River	At Lake Ripple Dam	*307	*308
			Approximately 100 feet downstream of Worcester Street.	*307	*308
		Axtell Brook	At confluence with Lake Ripple	None	*308
			Approximately 1,400 feet upstream of Carroll Road.	None	*361
		Miscoe Brook	At confluence with Silver Lake	None	*355
			Approximately 2.2 miles upstream of confluence with Silver Lake.	None	*402
		Silver Lake	Approximately 125 feet downstream of confluence of Miscoe Brook.	None	*355
		Cronin Brook	At confluence with Blackstone River	None	*302
			Approximately 50 feet upstream of Millbury Street.	None	*340
Maps available for inspection at the Municipal Center, Town Engineers Office, 30 Providence Road, Grafton, Massachusetts.					
Send comments to Ms. Sheila Ide, Chairperson of the Town of Grafton Board of Selectmen, Worcester County, Municipal Center, 30 Providence Road, Grafton, Massachusetts 01519.					
New York	Willsboro, town, Essex County.	Bouquet River	Approximately 1.4 miles upstream of the confluence with Lake Champlain.	*102	*103

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At the corporate limit (approximately 7,300 feet of State Route 14A).	None	*196

Maps available for inspection at the Willsboro Town Hall, Point Road, Willsboro, New York.

Send comments to Ms. Edna Coonrod, Supervisor of the Town of Willsboro, Essex County, P.O. Box 370, Point Road, Willsboro, New York 12996.

North Carolina	Town of Cary, Wake County.	Crabtree Creek (Basin 18—Stream 9).	Just upstream of Interstate 40	None	*268
			Just downstream of SCS Dam No. 23	None	*269
			Just upstream of SCS Dam No. 23	None	*284
			Just downstream of dam near SR 1615	None	*322
			Just upstream of dam near SR 1615	None	*353
		Haleys Branch (Basin 18—Stream 10).	At mouth	None	*284
		Black Creek	At mouth	None	*284
		Tributary A (Basin 18—Stream 11)	Just downstream of SR 1652	*354	*353
		Stirrup Iron Creek	At mouth	None	*284
		(Basin 18—(Stream 12)	At county boundary	None	*321
		Basin 18—Stream 13	At mouth	None	*287
		Brier Creek	At mouth	None	*284
		(Basin 18—Stream 14)	About 2280 feet upstream of dam	None	*319
		Crabtree	At mouth	None	*284
		Creek Tributary No. 6 (Basin 18—Stream 20)	About 0.98 mile upstream of mouth	*306	*311
		Turkey Creek	At mouth	None	*304
		(Basin 18—Stream 23)	Just downstream of SR 1615	*319	*319
		Coles Branch	At mouth	None	*303
		(Basin 18—Stream 24)	Just downstream of dam	None	*307
			Just upstream of dam	None	*329
		Hatchet Grove Tributary (Basin 18—Stream 25).	About 350 feet downstream of SR 1613	None	*309
			About 250 feet downstream of dam	None	*314
		Swift Creek (Basin 20—Stream 1).	Just upstream of SR 1152	None	*306
			Just downstream of U.S. Route 64	*354	*352
		Lens Branch (Basin 20—Stream 22).	At mouth	*312	*309
			Just downstream of dam	None	*316
			Just upstream of dam	None	*342
			Just downstream of U.S. Routes 1 and 64	*366	*367
		Straight Branch (Basin 20—Stream 23).	At mouth	*352	351
			Just downstream of U.S. Route 1 and 64	*376	*372
		Swift Creek Tributary No. 7 (Basin 20—Stream 24).	At mouth	*325	*326
			Just downstream of dam at Glasgow Road	*341	*342
			Just upstream of dam at Glasgow Road	*358	*356
			Just downstream of dam near Pebble Creek Drive.	None	*373
			Just upstream of dam near Pebble Creek Drive	None	*383
			Just downstream of Maynard Road	*401	*401
		Swift Creek Tributary No. 7A (Basin 20—Stream 25).	At mouth	*358	*356
			About 2800 feet upstream of mouth	*358	*358
		Panther Creek (Basin 29—Stream 1).	At county boundary	None	*245
			About 0.96 mile upstream of SR 1625	None	*282
		Morris Branch (Basin 29—Stream 5).	At county boundary	None	*250
			Just downstream of SR 1625	None	*271
		Kit Creek (Basin 29—Stream 7).	At county boundary	None	*244
			Just downstream of State Road 55	None	*254
		Kit Creek Tributary (Basin 29—Stream 8).	About 0.87 mile upstream of mouth	None	*266
			About 0.97 mile upstream of mouth	None	*268
		Walnut Creek (Basin 30—Stream 1).	Just upstream of Interstate 40	None	*286
			Just downstream of Western Boulevard Extension.	None	*406
			Just upstream of Western Boulevard Extension	None	*411
			Just downstream of Maynard Road	*437	*437

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town Hall, Cary, North Carolina. Send comments to The Honorable Bill Coleman, Acting Town Manager, Town of Cary, P.O. Box 1147, Cary, North Carolina 27511.					
North Carolina	Town of Fuquay-Varina, Wake County.	Basal Creek (Basin 22—Stream 16).	About 0.82 mile upstream of dam	None	*330
			About 900 feet upstream of State Road 55	None	*360
		Terrible Creek (Basin 22—Stream 19).	About 2600 feet downstream of Sunset Lake Road (SR 1301).	None	*330
			Just Downstream of SR 1401	*387	*385
		Kenneth Creek (Basin 24—Stream 2).	About 2700 feet downstream of confluence of Bradley Creek.	None	*263
			Just downstream of U.S. Route 401	*285	*286
			Just upstream of U.S. Route 401	*291	291
			Just downstream of State Road 42	*371	375
		Bradley Creek (Basin 24—Stream 3).	At mouth	*272	*272
			Just downstream of U.S. Route 401	*283	*281
		Angier Creek (Basin 24—Stream 4).	About 200 feet upstream of mouth	None	*259
			Just downstream of dam	None	*319
			Just upstream of dam	None	*333
			Just downstream of abandoned railroad	*356	*356
		Rocky Ford Branch	At mouth	*307	*311
			About 1150 feet upstream of Norfolk Southern	*307	*311
		(Basin 24—Stream 5)	About 1150 feet upstream of Norfolk Southern Railways.	*357	*357
		Kenneth Branch (Basin 24—Stream 6).	At mouth	*367	*366
			Just downstream of Norfolk Southern Railway	377	*377
		Neil Creek (Basin 24—Stream 7).	At mouth	*308	*308
			About 500 feet upstream of Angier Road	*316	*317
			Just downstream of Holland Road	*323	*323
		Neil Branch (Basin 24—Stream 8).	At mouth	*321	*320
			Just downstream of East Spring Avenue	*342	*342
Maps available for inspection at the Town Hall, 1300 East Academy Street, Fuquay-Varina, North Carolina. Send comments to The Honorable William V. Lee, Town Manager, Town of Fuquay-Varina, 1300 East Academy Street, Fuquay-Varina, North Carolina 27526.					
North Carolina	Town of Garner, Wake County.	White Oak Creek (Basin 19—Stream 1).	Just downstream of confluence of Basin 19—Stream 3.	None	*243
			About 2.0 miles upstream of SR 2555	None	*288
		Unnamed Stream (Basin 19—Stream 3)	At mouth	None	*243
			Just downstream of U.S. Route 70	None	*280
			Just upstream of U.S. Route 70	None	*295
			Just downstream of Norfolk Southern Railway	None	*303
		Unnamed Stream (Basin 19—Stream 4).	At mouth	None	*262
			Just downstream of Norfolk Southern Railway	None	*287
		Swift Creek (Basin 20—Stream 1).	About 1.55 miles downstream of State Road 50.	None	*220
			Just downstream of dam	None	*227
			Just upstream of dam	None	*241
			Just downstream of SR 1006	*242	*245
		Mahlers Creek (Basin 20—Stream 6).	At mouth	None	*225
			About 2.47 miles upstream of SR 2703	None	*268
		Mahlers Creek Tributary (Basin 20—Stream 7)	At mouth	None	*232
			Just downstream of SR 2707	None	*246
		Unnamed Stream (Basin 20—Stream 8)	Just downstream of SR 2707	None	*257
		Reedy Branch Tributary (Basin 20—Stream 9).	At mouth	*246	*246
			About 3000 feet upstream of mouth	258	*260
			Just downstream of Claymore Drive	*264	*264
		Bagwell Branch (Basin 20—Stream 10)	At mouth		
			Just downstream of State Road 50	*292	*293
		Reedy Branch (Basin 20—Stream 11).	At mouth	None	*240
			Just downstream of Seventh Avenue	*319	*319

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Buck Branch (Basin 20—Stream 12).	At mouth	*241	*240
			About 3950 feet upstream of Vandora Springs Road.	None	*288
		Yates Branch (Basin 20—Stream 13).	At mouth	*246	*247
			Just downstream of Lake Wheeler Road	None	*288
		Echo Branch (Basin 20—Stream 14).	Just upstream of Old Stage Road	*265	*265
			Old Stage Road upstream of Old Stage Road	*273	*272
			Just downstream of Winterlochen Road	*302	*302
			Just upstream of Winterlochen Road	*309	*309
			Just downstream of Vesta Drive	*311	*311
		Big Branch (Basin 30—Stream 2).	Just upstream of SR 2548	None	*232
			Just downstream of dam	None	*260
		Unnamed Stream (Basin 30—Stream 3).	About 1.08 miles upstream of SR 2548	None	*262
		Big Branch Tributary No. 1 (Basin 30—Stream 6).	About 2100 feet downstream of Creech Road	None	*218
			At confluence of Adams Branch (Basin 30—Stream 9).	None	*253
		Hillard Creek (Basin 30—Stream 7).	At mouth	*220	*220
			About 3600 feet upstream of mouth	*242	*244
		Unnamed Stream (Basin 30—Stream 8).	At mouth	None	*230
			About 2900 feet upstraem of mouth	None	*260
		Adams Branch (Basin 30—Stream 9).	At mouth	*255	*253
			Just downstream of SR 2569	276	*276

Maps available for inspection at the Towwn Hall, Garner, North Carolina.

Send comments to The Honorable Peter Bine, Town Manager, Town of Garner, P.O. Box 446, Garner, North Carolina 27529.

North Carolina	Town of Knightdale, Wake County.	Mingo Creek (Basin 12—Stream 2).	Just upstream of dam (about 1.0 mile upstream of mouth.	*250	*257
			Just downstream of SR 2233	*270	*270
		Popular Creek (Basin 13—Stream 1).	About 700 feet downstream of confluence of Poplar Branch (Basin 13—Stream 2).	*212	*211
			About 500 feet upstream of SR 2233	*227	*224
			Just downstream of SR 2513	*245	*245
			Just upstream of SR 2513	*251	*251
			About 900 feet upstream of SR 2513	*251	*251
		Poplar Branch (Basin 13—Stream 2).	At mouth	*216	*215
			Just downstream of Farm Road	*240	*240
		Mango Creek (Basin 15—Stream 11).	About 1.55 miles upstream of Norfolk Southern Railway.	*226	*224
			About 2.23 miles upstream of Norfolk Southern Railway.	None	*251

Maps available for inspection at the Town Hall, Knightdale, North Carolina.

Send comments to The Honorable Paul Peckens, Acting Town Manager, Town of Knightdale, P.O. Box 640, Knightdale, North Carolina 27545.

North Carolina	Town of Morrisville, Wake County.	Crabtree Creek (Basin 18—Stream 9).	At confluence of Stirrup Iron Creek (Basin 18—Stream 12).	None	*284
			About 2500 feet downstream of confluence of Coles Branch (Basin 18—Stream 24).	*298	*298
		Stirrup Iron Creek (Basin 18—Stream 12).	At mouth	None	*284
			Just downstream of Interstate 40	None	*293
		Basin 18—Stream 13	At mouth	None	*287
			Just downstream of SR 1640	None	*291
		Coles Branch (Basin 18—Stream 24).	About 250 feet downstream of dam	None	*306
			Just downstream of dam	None	*307
			Just upstream of dam	None	*329
			About 3150 feet upstream of dam	*329	*329
		Hatchet Grove Tributary (Basin 18—Stream 25).	At mouth	*295	*293
			About 1100 feet upstream of SR 1613	None	*313
		Morrisville Tributary (Basin 18—Stream 26).	At mouth	*288	*288
			Just downstream of State Road 54	*294	*293
			Just upstream of State Road 54	*301	*300

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 1450 feet upstream of Norfolk Southern Railway.	None	*304
		Kit Creek (Basin 29—Stream 7).	About 1.5 miles upstream of confluence of Kit Creek Tributary No. 1 (Basin 29—Stream 11).	None	*283

Maps available for inspection at the Town Hall, Morrisville, North Carolina.

Send comments to The Honorable Phin Horton, Town Manager, Town of Morrisville, P.O. Box 166, Morrisville, North Carolina 27560.

North Carolina	City of Raleigh, Wake County.	Neuse River (Basin 15—Stream 1).	About 1300 feet upstream of confluence of Basin 15—Stream 9.	None	*171
			Just downstream of SR 2000	None	*206
		Beaverdam Creek (Basin 15—Stream 21).	At mouth	*188	*188
			Just downstream of Buffalo Road	*188	*195
			Just upstream of Buffalo Road	*188	*200
			Just downstream of Aithcock Loop Road	None	*236
		Perry Creek (Basin 15—Stream 26).	At mouth	*196	*197
			Just downstream of U.S. Route 1	*233	*242
			Just upstream of SR 2179	*251	*250
			Just downstream of abandoned road (about 2200 feet upstream of CSX Railroad.	258	*259
			Just upstream of abandoned road	*264	*264
			Just downstream of dam at Hunting Ridge Road.	*287	*283
			Just upstream of dam at Hunting Ridge Road	*298	*298
			About 4.73 miles above mouth	*309	*305
			Just downstream of footbridge (about 2000 feet upstream of Rainwater Road).	*329	*329
			Just upstream of footbridge (about 2000 feet upstream of Rainwater Road).	*334	*334
			Just downstream of dam (about 5.28 miles upstream of mouth.	*339	*339
		Perry Creek East Branch (Basin 15—Stream 27).	At mouth	*196	*197
			Just downstream of Fox Road	*207	*206
			Just upstream of Fox Road	*211	*211
			About 0.93 mile upstream of Fox Road	*265	*260
		Basin 15—Stream 28	At mouth	*196	*197
			About 0.86 mile upstream of mouth	*205	*205
		Hare Snipe Creek (Basin 18—Stream 1).	At mouth	*239	*240
			Just downstream of Rembert Drive	*262	*262
			Just upstream of Rembert Drive	*267	*267
			About 2.37 miles upstream of mouth	*310	*308
			About 1950 feet upstream of Leesville Road	*312	*312
		Richland Creek (Basin 18—Stream 3).	At mouth	*253	*254
			Just downstream of dam	*290	*283
			Just upstream of dam	*320	*320
			Just downstream of Wade Avenue	*344	*344
			Just upstream of Wade Avenue	*349	*349
			About 4.36 miles upstream of mouth	*359	*356
			Just downstream of Trinity Road	*366	*366
		Basin 18—Stream 4	At mouth	*281	*281
			About 0.47 mile upstream of mouth	*297	*295
			Just downstream of U.S. Route 70	*300	*300
			Just upstream of U.S. Route 70	*305	*305
			About 2500 feet upstream of U.S. Route 70	*314	*319
		Turkey Creek (Basin 18—Stream 5).	About 0.90 mile downstream of dam	None	*280
			Just downstream of dam	*310	*310
			Just upstream of dam	*339	*339
			Just downstream of U.S. 70	*342	*342
		Sycamore Creek (Basin 18—Stream 6).	About 2050 feet downstream of confluence of Basin 18—Stream 8.	*353	*357
			About 2700 feet upstream of ACC Boulevard	None	*396
		Basin 18—Stream 8	At mouth	*359	*359
			Just downstream of U.S. Route 70	*368	*368
			Just upstream of U.S. Route 70	*376	*375
			About 1.14 miles above mouth	*394	*392
			Just downstream of Westgate Road	*400	*400
			Just upstream of Westgate Road	None	*411
			About 0.63 mile upstream of Westgate Road	None	*433
		Crabtree Creek (Basin 18—Stream 9).	At mouth	*176	*176

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 1.60 miles downstream of SCS Dam No. 23.	None	*261
		Little Brier Creek	Just upstream of SR 1644	*315	*319
			At county boundary	*348	*348
		Basin 18—Stream 16	At mouth	*320	*321
			Just downstream of U.S. Route 70	*348	*348
		Marsh Creek (Basin 18—Stream 17)	At mouth	*202	*213
			Just downstream of Ingram Drive	*223	*223
			Just upstream of Ingram Drive	*230	*229
			Just downstream of CSX Railroad	*269	*270
			Just upstream of CSX Railroad	*284	*284
			Just downstream of Quail Ridge Road	*287	*290
			Just upstream of Quail Ridge Road	*296	*296
			About 1800 feet upstream of Quail Ridge Road	*311	*310
		Millbrook	At mouth	*238	*237
		Tributary (Basin 18—Stream 19)	Just downstream of Brockton Drive	*242	*242
			Just upstream of Brockton Drive	*252	*250
			Just downstream of Millbrook Road	*263	*263
		New Hope	At mouth	*216	*216
		Tributary (Basin 18—Stream 18)	Just downstream of dam (upstream of Huntleigh Road).	*239	*240
			Just upstream of dam (upstream of Huntleigh Road).	*250	*250
			Just downstream of dam near New Hope Church Road.	*254	*254
			Just upstream of dam near New Hope Church Road.	*271	*271
			Just downstream of dam near Waterbury Drive	*281	*281
		Big Branch	At mouth	*214	*215
		(Basin 18—Stream 21)	Just downstream of U.S. Routes 64 and 70 Bypass.	*221	*222
			Just upstream of U.S. Routes 64 and 70 Bypass.	*224	*227
			Just downstream of Compton Drive	*249	*249
			Just upstream of Compton Drive	*254	*254
			About 1300 feet upstream of Compton Drive	*259	*260
			Just downstream of Purdue Street	*275	*275
			Just upstream of Purdue Street	*281	*281
			Just downstream of Mill Brook Road	*281	*281
			Just upstream of Mill Brook Road	*288	*287
			About 900 feet upstream of Mill Brook Road	*297	*298
		Lakemont	At mouth	*254	*254
		Tributary (Basin 18—Stream 22)	About 1000 feet upstream of mouth	*268	*269
			Just downstream of Latimer Road	*283	*283
			Just upstream of Latimer Road	*290	*290
			About 1300 feet upstream of Latimer Road	None	*314
		Pigeon House Branch (Basin 18—Stream 27)	At mouth	*204	*205
			Just downstream of CSX Railroad	*216	*219
			Just upstream of CSX Railroad	*224	*224
			Just downstream of Downtown Boulevard	*242	*243
			Just upstream of Downtown Boulevard	*246	*249
			Just downstream of Dortch Street	*258	*255
			Just upstream of Dortch Street	*261	*262
			Just downstream of Peace Street	*274	*275
		Beaverdam Creek (Basin 18—Stream 28)	At mouth	*220	*220
			About 4500 feet upstream of mouth	*230	*232
			Just downstream of Glenwood Avenue	*242	*242
			Just upstream of Glenwood Avenue	*247	*247
		Southwest	At mouth	*247	*247

Prong Beaverdam Creek (Basin 18—Stream 29)	Just downstream of Cambridge Road	*260	*260
	Just upstream of Cambridge Road	*266	*266
	Just upstream of Brooks Avenue	*280	*283
	Just downstream of Dixie Trail	*327	*328
	Just upstream of Dixie Trail	*334	*334
	Just downstream of Wade Avenue	*338	*338
Southeast	At mouth	*247	*247
Prong Beaverdam Creek (Basin 18—Stream 30)	Just downstream of Fairview Road	*265	*265
	Just upstream of Fairview Road	*271	*271
	About 500 feet downstream of Churchill Road	*282	*284
	Just downstream of Churchill Road	*290	*290
	Just upstream of Churchill Road	*296	*296
	Just downstream of Grant Avenue	*305	*305
	Just upstream of Grant Avenue	*315	*315
	Just downstream of Wade Avenue	*316	*316
Mine Creek	At mouth	*232	*232
(Basin 18—Stream 31)	Just downstream of Shelly Lake Dam	*235	*235
	Just upstream of Shelly Lake Dam	*275	*275
Lynn Road	At mouth	*275	*275
Tributary (Basin 18—Stream 32)	About 2400 feet upstream of mouth	*292	*289
	Just downstream of Lead Mine Road	*305	*305
	Just upstream of Lead Mine Road	*310	*310
West Fork Mine Creek	At mouth	*275	*275
(Basin 18—Stream 33)	About 1500 feet upstream of mouth	*281	*280
	About 2800 feet upstream of mouth	*287	*287
East Fork Mine Creek	At mouth	*275	*275
(Basin 18—Stream 34)	About 1400 feet upstream of mouth	*284	*283
	Just downstream of Long Street	*291	*291
	Just upstream of Long Street	*307	*307
	Just upstream of Six Forks Road	*313	*313
	Just downstream of Newton Road	*318	*318
	Just upstream of Newton Road	*329	*329
	About 2450 feet upstream of Newton Road	*335	*338
East Fork Mine Creek Tributary.	At mouth	*317	*317
(Basin 18—Stream 35)	Just downstream of Woodbend Drive	*338	*336
	Just upstream of Woodbend Drive	*342	*342
	About 1900 feet upstream of Woodbend Drive	None	*354
House Creek	At mouth	*236	*236
(Basin 18—Stream 36)	About 3700 feet above mouth	*243	*249
	Just downstream of Beltline	*243	*243
	Just upstream of Beltline	*248	*248
	Just downstream of Glen Eden Road	*254	*254
	Just upstream of Glen Eden Road	*260	*260
	Just downstream of Horton Street	*299	*299
	Just upstream of Horton Street	*307	*307
	About 2.46 miles above mouth	*319	*325
	Just downstream of U.S. Route 64	*334	*334
Armory Tributary	At mouth	*343	*343
(Basin 18—Stream 38)	About 2700 feet upstream of mouth	None	*367
Medfield Tributary	At mouth	*327	*328
(Basin 18—Stream 39)	Just upstream of Wade Avenue	*335	*335
	Just downstream of Trinity Road	*363	*364
	Just upstream of Trinity Road	*368	*369
	About 1600 feet upstream of Trinity Road	*381	*378
Yates Branch (Basin 20–Stream 13).	Just upstream of Lake Wheeler Road	*288	*288
	Just upstream of dam	*296	*296
	About 3.56 miles upstream of dam	None	*409
Walnut Creek	At mouth	*174	*174
(Basin 30—Stream 1)	Just downstream of Interstate 40	*195	*196
	Just upstream of Interstate 40	*196	*201
	Just downstream of Lake Raleigh Dam	*270	*270
	Just upstream of Lake Raleigh Dam	*285	*285
	Just downstream of Lake Johnson Dam	*317	*315
	Just upstream of Lake Johnson Dam	*351	*351
	Just downstream of Maynard Road	None	*437
Big Branch	At mouth	*184	*184
(Basin 30—Stream 2)	Just downstream of SR 2548	None	*226
	Just upstream of SR 2548	None	*232

			About 300 feet upstream of SR 2548	None	*235
		Basin 30—Stream 3	At mouth	None	*199
			Abpit 1.42 miles upstream of mouth	None	*262
		Wildcat Branch	At mouth	*235	*232
		(Basin 30—Stream 4)	Just upstream of Interstate 40 offramp	*235	*238
			Just upstream of Norfolk Southern Railway	*243	*243
			Just upstream of dam	*250	*250
			About 1.27 miles upstream of mouth	None	*252
		Rocky Branch	At mouth	*236	*234
		(Basin 30—Stream 5)	Just downstream of West Cabarrus Street	*273	*272
			Just upstream of West Cabarrus Street	*279	*279
			Just downstream of Western Boulevard (downstream crossing).	*283	*282
			Just upstream of Western Boulevard (downstream crossing).	*291	*291
			Just downstream of Western Boulevard (upstream crossing).	*299	*298
			Just upstream of Western Boulevard (upstream crossing).	*302	*305
			Just downstream of Pullen Road	*319	*319

Maps available for inspection at the Inspection Department, City Hall, Raleigh, North Carolina.

Send comments to The Honorable D.E. Benton, City manager, City of Raleigh, P.O. Box 590, Raleigh, North Carolina 27602.

North Carolina	Unincorporated areas, Wake County.	Little Beaverdam Creek	About 2.07 miles upstream of mouth	None	*299
		(Basin 2—Stream 2)	At county boundary	*323	*323
		Newlight Creek	At mouth	*262	*263
		(Basin 3—Stream 1)	At confluence of Basin 3—Stream 8	*279	*279
		Basin 3—	At mouth	*262	*263
		Stream 6	About 1.30 miles upstream of mouth	*306	*306
		Basin 3—	At mouth	None	*279
		Stream 8	About 1.52 miles upstream of mouth	None	*372
		Buckhorn Branch	At mouth	*262	*263
		(Basin 3—Stream 9)	About 1.35 miles upstream of mouth	*296	*299
		Horse Creek	Just upstream of State Road 98	*262	*264
		(Basin 4—Stream 1)	About 2400 feet upstream of SR 1909	None	*338
		Basin 4—	At mouth	None	*322
		Stream 3	Just downstream of dam	*357	*361
			Just upstream of dam	*357	*373
			Just downstream of SR 1909	*379	*378
		Lowery Creek (Basin 4—Stream 10).	About 3000 feet upstream of mouth	*264	*263
			Just downstream of dam	*358	*350
			Just upstream of dam	*358	*366
			Just downstream of SR 1909	*373	*371
		Basin 4—	At mouth	*284	*279
		Stream 13	About 1.08 miles upstream of mouth	None	*342
		Mud Branch	At mouth	*262	*264
		(Basin 4—Stream 15)	Just downstream of first dam upstream of mouth.	*327	*321
			Just upstream of first dam upstream of mouth	*342	*341
			Just upstream of second dam upstream of mouth.	*347	*353
			Just downstream of third dam upstream of mouth.	*410	*412
			Just upstream of third dam upstream of mouth	*410	*423
			Just downstream of dam just upstream of SR 1909.	*440	*439
			Just upstream of dam just upstream of SR 1909.	*448	*448
		Richland	At mouth	*203	*205
		Creek (Basin 5—Stream 1)	About 0.60 mile upstream of West Oak Avenue	None	*295
		Smith Creek	At mouth	*200	*200
		(Basin 6—Stream 1)	At county boundary	None	*328
		Dunn Creek	At mouth	None	*234
		(Basin 6—Stream 5)	About 0.99 mile upstream of SR 1942	None	*368
		Spring Branch	At mouth	None	*240
		(Basin 6—Stream 6)	About 830 feet upstream of mouth	None	*246
		Sanford Creek	At mouth	*216	*218
		(Basin 6—Stream 7)	About 1.23 miles upstream of SR 2049	None	*240
		Reedy Creek	At mouth	*237	*237
		(Basin 6—Stream 8)	About 1000 feet upstream of mouth	*242	*240
			Just downstream of SR 2052	*254	*254
		Basin 6—	At mouth	*238	*239
		Stream 9	Just downstream of SR 2052	*300	*301
		Austin Creek (Basin 6—Stream 10).	At 2600 feet upstream of mouth	None	*263
			Just upstream of SR 1945	None	Just downstream of SR 1945
					*332

Toms Creek	At mouth	*199	*200
(Basin 7—Stream 1)	Just downstream of first dam upstream of mouth.	*224	*224
	Just upstream of first dam upstream of mouth	*235	*235
	Just downstream of second dam upstream of mouth.	*235	*235
	Just upstream of second dam upstream of mouth.	*235	*249
	About 0.87 mile upstream of SR 2049	None	*277
Hodges Creek	At mouth	*191	*191
(Basin 8—Stream 1)	About 1.14 miles upstream of mouth	*198	*196
	About 1000 feet downstream of SR 2228	*213	*214
	Just downstream of SR 2228	*216	*216
Hodges Creek	Just upstream of SR 2228	*222	*222
(Basin 8—Stream 1) (continued)	About 1100 feet upstream of SR 2228	*223	*223
Powell Creek	At mouth	*193	*194
(Basin 8—Stream 7)	Just downstream of first dam upstream of mouth.	*205	*205
	Just upstream of first dam upstream of mouth	*215	*210
	Just downstream of second dam upstream of mouth.	*221	*221
	Just upstream of second dam upstream of mouth.	*228	*228
	About 2.69 miles upstream of SR 2226	None	*261
Buffalo Creek	At county boundary	None	*247
(Basin 9—Stream 1)	Just downstream of SR 2324	*286	*286
Little River	At county boundary	*219	*219
(Basin 10—Stream 1)	Just downstream of dam at SR 2224	None	*275
	Just upstream of dam at SR 2224	None	*283
	Just downstream of State Road 96	None	*301
	Just upstream of State Road 96	None	*306
	About 0.93 mile upstream of State Road 96	None	*319
Basin 10—	At mouth	*221	*221
Stream 2	At county boundary	None	*246
Basin 10	At mouth	*221	*221
Stream 3	Just upstream of dam 1300 feet upstream of mouth.	*223	*227
	Just upstream of dam 2600 feet upstream of mouth.	*229	*231
Hominy Branch	At mouth	None	*229
(Basin 10—Stream 4)	About 1.56 miles upstream of mouth	None	*261
Basin 10—	At mouth	*245	*246
Stream 5	Just downstream of SR 2329	*274	*274
Basin 10—	At mouth	*253	*253
Stream 6	Just downstream of SR 2329	*253	*253
Hominy Creek	At mouth	*254	*254
(Basin 10—Stream 7)	Just downstream of SR 2329	*254	*254
Big Branch	At mouth	*257	*257
(Basin 10—Stream 8)	About 3000 feet upstream of mouth	*267	*264
	Just downstream of State Road 96	*282	*282
Basin 10—	At mouth	*257	*258
Stream 9	Just upstream of State Road 96	*289	*289
Basin 10—	At mouth	*260	*260
Stream 10	Just downstream of dam	*266	*266
	Just upstream of dam	*266	*271
Buffalo Branch	At mouth	None	*222
(Basin 10—Stream 22)	About 2000 feet upstream of mouth	None	*226
Moccasin Creek	At county boundary	None	*212
(Basin 11—Stream 1)	Just upstream of U.S. Route 264	None	*219
	Just downstream of State Road 39	None	*231
	Just upstream of dam at State Road 39	None	*241
	Just upstream of SR 2308	None	*284
	About 400 feet upstream of SR 2308	None	*296
	About 2850 feet upstream of SR 2308	None	*302
Little Creek	At county boundary	*218	*218
(Basin 11—Stream 2)	Just downstream of State Road 39	*223	*223
	Just upstream of State Road 39	*229	*229
	About 1.33 miles upstream of mouth	*231	*229
	About 1.23 miles upstream of State Road 39	None	*240
Beaverdam Creek	At mouth	None	*227
(Basin 11—Stream 3)	Just downstream of dam	*320	*320
Beaverdam Creek	At mouth	*185	*184
(Basin 12—Stream 1)	Just downstream of dam at SR 2217	*190	*189
	Just upstream of dam at SR 2217	*195	*195
	About 1.89 miles above mouth	*198	*201
	Just downstream of SR 2049	*207	*207
	Just upstream of SR 2049	*213	*213
	Just downstream of SR 2228	*232	*232
Basin 12—Stream 3	At mouth	*214	*214
	About 2500 feet upstream of mouth	*232	*228
	Just downstream of SR 2228	*245	*245
Poplar Creek (Basin 13—Stream 1).	At mouth	*169	*166
	About 1.55 mile upstream of SR 1007	*212	*211

Marks Creek (Basin 14—Stream 1).	About 0.75 mile downstream of SR 2501	*209	*209
	About 7.39 miles above mouth	*217	*213
	About 8.52 miles above mouth	*231	*230
	Just downstream of SR 2500	*256	*256
Neuse River (Basin 15—Stream 1).	At county boundary	*163	*161
	Just downstream of SR 2000	*205	*206
Basin 15—Stream 7	At mouth	*173	*170
	About 1.52 miles above mouth	*182	*188
	Just downstream of SR 1007	*194	*194
	Just upstream of SR 1007	*199	*199
	About 2.84 miles above mouth	*217	*208
	Just downstream of SR 2601	*228	*228
Basin 15—Stream 8	At mouth	*176	*175
	Just downstream of SR 2511	*209	*209
Basin 15—Stream 9	At mouth	*177	*171
	Just downstream of SR 2552	*197	*197
Mango Creek (Basin 15—Stream 11).	At mouth	*185	*176
	About 1.55 miles upstream of Norfolk Southern Railway.	None	*224
Beaverdam Creek (Basin 15—Stream 21).	Just downstream of Buffalo Road	None	*195
	At mouth	None	*188
	Just upstream of Buffalo Road	None	*200
	Just downstream of Aithcock Loop Road	None	*236
Basin 15—Stream 22	At mouth	*189	*189
	About 3500 feet upstream of mouth	*203	*201
	Just downstream of SR 2049	*219	*219
Basin 15—Stream 25	At mouth	*194	*194
	About 4500 feet upstream of mouth	*230	*212
	Just downstream of SR 2049	*249	*249
Honeycutt Creek (Basin 15—Stream 31).	About 2.49 miles upstream of mouth	*262	*263
	Just downstream of SR 2005	*300	*300
Basin 15—Stream 32	At mouth	*262	*263
	Just downstream of SR 2010	*279	*279
Basin 15—Stream 33	At mouth	*267	*265
	Just downstream of dam	*276	*276
	Just upstream of dam	*276	*292
	Just downstream of SR 2005	*293	*293
	Just upstream of SR 2005	*306	*306
Cedar Creek (Basin 15—Stream 34).	About 1.33 miles upstream of mouth	*262	*263
	Just downstream of dam	*311	*311
	Just upstream of dam	*311	*332
	About 1900 feet upstream of dam	*331	*336
Upper Barton Creek (Basin 16—Stream 1).	At mouth	*262	*263
	Just downstream of SR 1841	*357	*357
Basin 16—Stream 2	At mouth	*262	*263
	Just downstream of State Road 50	*324	*324
Basin 16—Stream 5	At mouth	*268	*268
	Just upstream of dam	*284	*284
	About 3000 feet upstream of mouth	*286	*284
	Just downstream of State Road 50	*286	*286
	Just upstream of State Road 50	*292	*292
	About 1250 feet upstream of State Road 50	*297	*297
Lower Barton Creek (Basin 17—Stream 1).	At mouth	*262	*263
	Just downstream of State Road 50	*315	*316
	Just upstream of State Road 50	*320	*321
	Just downstream of SR 1828	*381	*381
Basin 17—Stream 4	At mouth	*294	*294
	About 3000 feet upstream of mouth	*312	*304
	Just downstream of State Road 50	*352	*352
	Just upstream of State Road 50	*361	*361
	Just downstream of SR 1831	*361	*364
Sycamore Creek	About 5.68 miles upstream of mouth	*347	*347
(Basin 18–Stream 6)	Just downstream of unnamed road about 6.01 miles upstream of mouth.	*348	*351
(Basin 18–Stream 6)	Just upstream of unnamed road about 6.01 miles upstream of mouth.	*348	*357
Basin 18–Stream 8	At mouth	*359	*359
Stream 8	Just downstream of U.S. Route 70	*368	*369
	Just upstream of U.S. Route 70	*376	*375
	Just downstream of Westgate Road	*400	*400
	Just upstream of Westgate Road	*410	*411
	About 3400 feet upstream of Westage Road	*439	*428
Crabtree Creek	About 1.80 miles downstream of Interstate 40	None	*259
(Basin 18–Stream 9)	About 1.10 miles upstream of SCS Dam 23	*278	*284
Haleys Branch	At mouth	*276	*284
(Basin 18–Stream 10)	About 0.6 mile upstream of Interstate 40	*292	*292
Stirrup Iron Creek	Just upstream of Interstate 40	*321	*321

(Basin 18–Stream 12)			
Brier Creek	Just downstream of dam	*300	*289
(Basin 18–Stream 14)	Just upstream of dam	*300	*319
White Oak Creek	At county boundary	*223	*223
(Basin 19–Stream 1)	About 5.30 miles above mouth	*238	*235
	About 1750 feet upstream of SR 2555	*251	*251
Basin 19–Stream 4	At mouth	*263	*262
Stream 4	Just downstream of Norfolk Southern Railway	*286	*287
Swift Creek	At county boundary	*203	*203
(Basin 20–Stream 1)	Just downstream of dam near State Road 50	*227	*227
	Just upstream of dam near State Road 50	*241	*241
	Just downstream of Old Stage Road	*241	*245
	Just downstream of Norfolk Southern Railway	*247	*251
	Just downstream of Lake Wheeler Dam	*267	*269
	Just upstream of Lake Wheeler Dam	*292	*292
	About 2000 feet downstream of SR 1300	*315	*315
Bagwell Branch	At mouth	*241	*241
(Basin 20–Stream 10)			
Ready Branch (Basin 20–Stream 11).	At mouth	None	*241
Yates Branch	At mouth	*246	*247
(Basin 20–Stream 13)	Just downstream of Norfolk Southern Railway	*253	*257
	Just downstream of dam	*288	*288
	Just upstream of dam	*296	*296
	About 3.56 miles upstream of dam	None	*409
Echo Branch	At mouth	*253	*257
(Basin 20–Stream 14)	Just downstream of Old Stage Road	*264	*265
Dutchmans Branch	At mouth	*292	*292
	Just upstream of dam	*292	*298
(Basin 20–Stream 17)	About 3100 feet upstream of Dutchman Downs Road.	None	*389
Basin 20–Stream 20	At mouth	*298	*294
	About 0.83 mile upstream of mouth	None	*318
Middle Creek	At county boundary	None	*214
(Basin 22–Stream 1)	Just downstream of Norfolk Southern Railway	*250	*256
	Just upstream of Norfolk Southern Railway	*262	*261
	About 1.7 miles upstream of SR 1301	*378	*373
Panther Branch	At mouth	None	*237
(Basin 22–Stream 2)	About 2850 feet upstream of SR 2724	None	*305
Mills Branch (Basin 22–Stream 5).	At confluence with Middle Creek (Basin 22–Stream 1).	*254	*251
	Just downstream of SR 2724	*263	*262
	Just upstream of 2724	*271	*271
	Just downstream of Norfolk Southern Railway	*274	*274
Basin 22-Stream 6	At mouth	None	*271
	About 2550 feet upstream of Old Smithfield Road.	None	*348
Camp Branch (Basin 22—Stream 7).	At mouth	None	*291
	About 1.1 miles upstream of unnamed road	None	*360
Rocky Branch (Basin 22—Stream 8).	At confluence with Middle Creek (Basin 22—Stream 1).	*297	*301
	Just downstream of SR 1152	*370	*370
Basin 22—Stream 9	At mouth	*300	301
	About 3600 feet upstream of SR 1390	None	*355
Basal Creek (Basin 22—Stream 16).	At mouth	*312	*312
	Just downstream of dam	*317	*316
	Just upstream of dam	*328	*328
	About 0.75 mile upstream of State Road 55	None	*361
Terrible Creek (Basin 22—Stream 19).	At mouth	*237	*243
	Just downstream of dam	*308	*308
	Just upstream of dam	*324	*324
	Just downstream of SR 1301	None	*343
Basin 22—Stream 20	At confluence with Terrible Creek (Basin 22—Stream 19).	None	*269
	About 1.0 mile upstream of confluence with Terrible Creek (Basin 22—Stream 19).	None	*312
Rocky Ford Branch (Basin 24—Stream 5).	About 500 feet upstream of Norfolk Southern Railway.	None	*351
	About 1700 feet upstream of Norfolk Southern Railway.	None	*362
Little Beaver Creek (Basin 27—Stream 1).	At county boundary	None	*239
	About 1.0 mile upstream of SR 1141	None	*278
Beaver Creek (Basin 27—Stream 2).	At county boundary	None	*239
	Just downstream of SR 1611	*346	*354
Beaver Creek Tributary (Basin 27—Stream 3).	At mouth	None	*264
	About 0.78 mile upstream of mouth	None	*277
Basin 27—Stream 4	At mouth	*285	*283
	About 1250 feet upstream of mouth	*292	*290

		Reedy Branch (Basin 27—Stream 5).	At mouth	None	*239
			Just upstream of confluence of Reedy Branch Tributary.	None	*266
		Reedy Branch Tributary (Basin 27—Stream 6).	At mouth	None	*266
			Just downstream of SR 1163	None	*306
		Kit Creek (Basin 29—Stream 7).	Just upstream of State Road 55	None	*256
			About 2.21 miles upstream of CSX Railroad	None	*286
		Kit Creek Tributary No. 2 (Basin 29—Stream 8).	At mouth	None	*258
			About 0.97 mile upstream of mouth	None	*268
		Kit Creek Tributary No. 1 (Basin 29—Stream 11).	At mouth	None	*260
			About 1.21 miles upstream of SR 1639	None	*280

Maps available for inspection at the Community Development Department, County Courthouse, Raleigh, North Carolina.

Send comments to The Honorable Richard Stevens, County Manager, Wake County, P.O. Box 550, Raleigh, North Carolina 27602.

North Carolina	Town of Wake Forest, Wake County.	Horse Creek (Basin 4—Stream 1).	Just upstream of SR 2916	*322	*322
			About 1800 feet upstream of confluence of Basin 4—Stream 3.	*323	*323
		Unnamed Stream (Basin 4—Stream 3).	About 2450 feet upstream of mouth	None	*335
			About 1800 feet downstream of dam	None	*352
		Richland Creek (Basin 5—Stream 1).	About 3450 feet downstream of U.S. Route 1	None	*221
			About 1650 feet upstream of U.S. Route 1	*236	*237
			About 3200 feet upstream of West Oak Avenue.	*295	*295
		Smith Creek (Basin 6—Steam 1).	At mouth	None	*200
			Just downstream of State Road 98	None	*270
			Just upstream of State Road 98	None	*275
			Just upstream of dam	None	*302
		Dunn Creek (Basin 6—Stream 5).	At mouth	*234	*234
			About 0.99 mile upstream of SR 1942	*368	*368
		Spring Branch (Basin 6—Stream 6).	At mouth	None	*240
			Just downstream of Franklin Street	None	*333
			Just upstream of Franklin Street	None	*342
		Austin Creek (Basin 6—Stream 10).	At mouth	None	*251
			About 2550 feet upstream of SR 2053	None	*267
		Neuse River (Basin 15—Stream 1).	Just downstream of confluence of Smith Creek (Basin 6—Stream 1).	None	*200

Maps available for inspection at the Town Hall, 401 East Elm Street, Wake Forest, North Carolina.

Send comments to The Honorable John Johnston, Acting Town Manager, Town of Wake Forest, 401 East Elm Street, Wake Forest, North Carolina 27587.

North Carolina	Town of Wendell, Wake County.	Buffalo Creek (Basin 9—Stream 1).	About 400 feet upstream of county boundary	None	*247
			About 2200 feet upstream of Norfolk Southern Railway.	None	*274
		Little River (Basin 10—Stream 1).	At confluence of Buffalo Branch (Basin 10—Stream 22).	*222	*222
			About 2200 feet upstream of U.S. Business Route 64.	None	*228
		Hominy Branch (Basin 10—Stream 4).	About 2700 feet downstream of SR 2329	*254	*256
			Just downstream of SR 2329	*270	*270
		Buffalo Branch (Basin 10—Stream 22).	At mouth	*222	*222
			About 1500 feet above mouth	*224	*222
			Just downstream of dam	*229	*229
			Just upstream of dam	*240	*241
			Just upstream of private road (about 4000 feet upstream of mouth).	*254	*257
			Above 6000 feet above mouth	*261	*257
			Just downstream of SR 2353	*271	*270
		Lizard Lick Creek (Basln 10—Stream 23).	At mouth	*226	*226
			About 5000 feet upstream of mouth	*244	*242
			Just downstream of SR 2359	*251	*250
			Just upstream of SR 2359	*256	*256
			Just downstream of dam	*262	*262

Maps available for inspection at the Town Hall, Wendell, North Carolina.

Send comments to The Honorable Ira C. Fuller, Town Manager, Town of Wendell, P.O. Box 828, Wendell, North Carolina 27591.

North Carolina	Town of Zebulon, Wake County.	Little River (Basin 10—Stream 1).	About 3150 feet upstream of U.S. Business Route 64.	*229	*228

		Wheeles Creek (Basin 10—Stream 25).	Just downstream of State Road 97	*236	*236
			At mouth	*233	*233
		Little Creek (Basin 11—Stream 2).	Just downstream of Worth Hinton Road	*280	*281
			About 1.16 miles downstream of Norfolk Southern Railway.	None	*240
			About 3000 feet downstream of Norfolk Southern Railway.	*247	*249
		Beaverdam Creek (Basin 11—Stream 3).	Just downstream of State Road 97	*265	*265
			Just upstream of State Road 97	*272	*272
			Just downstream of Cemetery Street	*281	*279
			About 1450 feet downstream of SR 2406	None	*275
			Just downstream of SR 1001	None	*297

Maps available for inspection at the Town Hall, 111 East Vance Street, Zebulon, North Carolina.

Send comments to The Honorable Charlie Horn, Town Manager, Town of Zebulon, 111 East Vance Street, Zebulon, North Carolina 27597.

Ohio	City of Highland Heights, Cuyahoga County.	Tributary A	About 700 feet downstream of Bishop Road	None	*865
			Just downstream of Highland Road	None	*934
		Tributary B	At mouth	None	*923
			Just downstream of Highland Road	None	*937
		Tributary C	Just upstream of Interstate 271	None	*914
			About 2100 feet upstream of Highland Road	None	*972
		Tributary D	About 2750 feet upstream of mouth	None	*882
			Just downstream of Highland Road	None	*944
		Tributary E	At mouth	None	*904
			About 800 feet upstream of Bishop Road	None	*931

Maps available for inspection at the Building Department, City Hall, 5827 Highland Road, Highland Heights, Ohio.

Send comments to The Honorable Virginia Swanson, Mayor, City of Highland Heights, 5827 Highland Road, Highland Heights, Ohio 44143.

Ohio	City of Lorain, Lorain County.	Brownhelm Creek	About 1.02 miles upstream of mouth	None	*588
			About 1.67 miles upstream of mouth	None	*598
		Quarry Creek	At U.S. Route 6	None	*579
			About 700 feet downstream of Copper Foster Park Road.	None	*646
		Unnamed Creek	Just downstream of Old Lake Road	None	*580
			About 1250 feet upstream of Old Lake Road	None	*583
		North Stem East Branch Beaver Creek.	At confluence with East Branch Beaver Creek	None	*599
		East Branch Beaver Creek	At Cooper Foster Park Road	None	*654
			At mouth	None	*592
			Just downstream of Cooper Foster Park Road	None	*620

Maps available for inspection at the Engineering Department, City Hall, 200 West Erie Avenue, Lorain, Ohio.

Send comments to The Honorable Alex Olejko, Mayor, City of Lorain, 200 West Erie Avenue, Lorain, Ohio 44052.

Oklahoma	Hydro, town, Caddo County.	Unnamed Tributary to Deer Creek.	Approximately 1,500 feet upstream of the confluence with Deer Creek.	None	*1,484
			At Main Street	None	*1,503

Maps available for inspection at the Town Hall, 505 West Fifth Street, Hydro, Oklahoma.

Send comments to The Honorable Dennison Duke, Mayor, of the Town of Hydro. Caddo County, 505 West 5th Street, Hydro, Oklahoma 73048.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

Issued: June 6, 1991.

[FR Doc. 91-13942 Filed 6-11-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket Nos. 91-33 and 91-34; DA 91-652]

Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies and Bundling of Cellular Customer Premises Equipment and Cellular Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: On May 28, 1991, the Commission adopted an Order granting Telocator an extension of time to file reply comments in the above-referenced dockets 56 FR 16049, April 19, 1991. In light of the complexity of the factual and legal raised in the above-referenced dockets and in order to promote administrative efficiency, the Order establishes a common reply date for all parties.

DATES: Date for filing reply comments in the above-referenced dockets is extended to June 19, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 29554.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 91-33 and CC Docket 91-34, adopted May 28, 1991 and released May 30, 1991.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC

Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street NW., Washington, DC 20036.

Order

Adopted May 28, 1991.
Released May 30, 1991.

By the Chief, Common Carrier Bureau:

1. On May 23, 1991, Telocator requested an extension of time to file reply comments in the above-referenced dockets.

2. Telocator states that the June 4, 1991 deadline for filing reply comments in the referenced dockets should be extended by 45 days to July 19, 1991, because the comments filed in both proceedings include economic studies, arguments and allegations concerning Telocator members that will require detailed analysis in order to formulate informed responses. With respect to CC Docket No. 91–33, Telocator further states that additional time is necessary to address comments seeking to expand the scope of the proceeding to re-examine the Commission's decision to deny the petition filed by the National Cellular Resellers Association.

3. In light of the complexity of the factual and legal issues raised in the above-referenced dockets, we agree with Telocator that additional time should be granted to prepare meaningful reply comments. Therefore, in order to promote administrative efficiency, a relatively brief extension of the common response date for all parties will be established. We cannot, however, find that Telocator has shown good cause for a 45 day extension of time. Therefore, the due date for filing reply comments is extended to June 19, 1991. Accordingly, Telocator's request is granted in part and denied in part.

Federal Communications Commission.
Richard M. Firestone,
Chief, Common Carrier Bureau.
[FR Doc. 91–13848 Filed 6–11–91; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-151, RM-7557]

Television Broadcasting Services; Victoria and New Braunfels, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by KVCT(TV), Inc., licensee of television station KVCT, Channel 19, Victoria, Texas, requesting the Commission to reallot Channel 19 from Victoria to New Braunfels, Texas. The coordinates for the proposed reallotment are 29–19–45 and 98–20–28. Since New Braunfels is located within 320 kilometers (199 miles) of the Mexican border, we have requested the concurrence of the Mexican government in this allotment.

Although this proposal falls within the parameters of certain markets for which the Commission has imposed a "freeze" on TV allotments, or applications therefore, a waiver may be appropriate in this instance since New Braunfels is further removed from the affected markets than is the current allotment at Victoria.

DATES: Comments must be filed on or before July 29, 1991, and reply comments on or before August 13, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., suite 700, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91–151, adopted May 23, 1991, and released June 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.
Andrew J. Rhodes,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 91–13849 Filed 6–11–91; 8:45 am]
BILLING CODE 6712-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Chapter 99

Cost Accounting Standards Board: Recodification of Cost Accounting Standards Board Rules and Regulations

AGENCY: Cost Accounting Standards Board, Office of Federa1 Procurement Policy, OMB.

ACTION: Proposed rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, today proposes for recodification at 48 CFR chapter 99, the Cost Accounting Standards Rules and Regulations currently found at both 48 CFR part 30, and 4 CFR parts 331 through 420. The Board is taking this action in order to provide for a single unified set of Cost Accounting Standards (CAS) applicable to Government contractors and subcontractors. This action by the Board does not result in the promulgation, amendment or rescission of any new or existing cost accounting standards. This proposed rule represents an effort by the Board to reconcile the existing sets of cost accounting standards previously promulgated by other bodies.

The proposed rule will be a part of the Federal Acquisition Regulation System. The Board is assigned chapter 99 within title 48 for the purpose of codifying regulations that fall within its jurisdiction. Statutory authority for this regulatory assignment is provided pursuant to section 5(h)(1) of the Office of Federal Procurement Policy Act of 1988, 41 U.S.C. 422(h)(1), which provides, in part, that rules and regulations promulgated by the Board shall be incorporated into the Federal Acquisition Regulation (FAR). The proposed regulation will be published in 48 CFR chapter 99, and incorporated into 48 CFR chapter 1, and will provide the basis for application of the Cost Accounting Standards to covered Government contractors and subcontractors.

DATES: Requests for a copy of the Board's proposed rule must be in writing and must be received by August 12, 1991. Comments on the proposed rule must be in writing and must be received by August 26, 1991.

ADDRESSES: Requests for a copy of the proposed rule, or comments upon its contents, should be addressed to the Office of Federal Procurement Policy, Cost Accounting Standards Board, 725 17th Street NW., room 9001, Washington, DC 20503. ATTN: CASB Docket #91–02.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary (telephone: 202–395–3254), or Robert Lynch, Project Director (telephone: 202–395–3254), Cost Accounting Standards Board.

SUPPLEMENTARY INFORMATION: Section 5 of Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422, established a Cost Accounting Standards Board (CASB) within the Office of Federal Procurement Policy. The Board consists of five members, including the Administrator for Federal Procurement Policy, who serves as Chairman. The Board has the exclusive statutory authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment and allocation of costs to contracts with the United States.

The rules and regulations that are the subject of this proposed rulemaking, were initially prescribed by the previous Cost Accounting Standards Board, established under the authority of section 719 of the Defense Production Act of 1950, 50 U.S.C., app. 2168, and are codified at 4 CFR parts 331 through 420. The previous Board was an independent agency within the Legislative Branch, and was chaired by the Comptroller General of the United States. That Board ceased operations on September 30, 1980. Nevertheless, the Cost Accounting Standards promulgated by that body, remain in full force and effect. On September 30, 1987, the signatories to the Federal Acquisition Regulation promulgated a rule recodifying, with minor editorial modifications, the rules and regulations issued by the previous Board. That rule is found at 48 CFR part 30. Since 1987, both CAS rules have been independently codified in the Code of Federal Regulations.

The proposed rule, which is the subject of today's action, is for the purpose of recodifying, into a single set of uniform regulations, those Cost Accounting Standards that are applicable to covered Government contractors and subcontractors. This single rule will replace previously issued sets of Cost Accounting Standards, and will serve to eliminate confusion over the appropriate regulatory base for issuance of the Standards. Although the Board may consider substantive future amendments to the Standards, this proposed recodification is purely administrative in nature, and serves to bring the Cost Accounting Standards into compliance with the statutory requirements of section 5(h) of the Office of Federal Procurement Policy Act of 1988, which requires that the Cost Accounting Standards be incorporated into the Federal Acquisition Regulation system. For the purpose of complying with this section of the Office of Federal Procurement Policy Act Amendments, the Office of the Federal Register has assigned to the Board, chapter 99 of title 48 of the Code of Federal Regulations. Chapter 99 is within the exclusive regulatory jurisdiction of the Board, and this recodification insures that the Board's rules and regulations are assigned to an appropriate chapter of the Code of Federal Regulations over which the Board has complete regulatory cognizance.

Because the proposed rule will be codified in a supplementary chapter of the Federal Acquisition Regulation system, the format used for codification of the Cost Accounting Standards found at 48 CFR part 30 have been retained in this recodification, whenever practicable. This has been done in order to minimize regulatory citation changes, and, because that version meets the formatting protocols of the Federal Acquisition Regulation system (including supplements thereto). However, this proposed rule is intended to be consistent with the promulgations of the previous CASB to the maximum extent practicable as prescribed by section 5(j)(1) of Public Law 100–679.

Section 5 of Public Law 100–679 also required certain changes to be made in the substance of the Cost Accounting Standards. Among these changes are an increase in the covered individual contract threshold from $100,000 to $500,000, and the extension of CAS coverage to non-defense contracts. The threshold increase to $500,000 has the effect of eliminating the triggering mechanism whereby the award of one $500,000 contract was a prerequisite to the coverage of all subsequent contract awards over $100,000. The Board continues to study the desirability of increasing this and other dollar thresholds contained in the Cost Accounting Standards, such as those relating to disclosure requirements and modified coverage. For purposes of this proposed rule, thresholds other than those mandated in the statute, or previously revised within part 30, have not been altered.

Dated: June 6, 1991.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 91–13861 Filed 6–11–91; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Request for Information on the Arctic and American Peregrine Falcons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service), Alaska Region, is reviewing the status of the Arctic peregrine falcon (*Falco peregrinus tundrius*) and American peregrine falcon (*Falco peregrinus anatum*) in northern North America. The Arctic peregrine falcon is currently listed as threatened, and the American peregrine falcon is classified as endangered. Both subspecies sustained extensive population declines in the 1960's and early 1970's. After the use or organochlorine pesticides was restricted many local populations recovered. Censuses show that the Arctic peregrine falcon throughout its range, and American peregrine falcon in Alaska and the Yukon and Northwest Territories, may no longer be endangered or threatened with extinction. The Service requests data on the status and comments on the possible reclassification of these populations. The data and comments will be used to determine if a reclassification action is warranted.

DATES: Comments from all interested parties must be received by August 12, 1991.

ADDRESSES: Comments and materials concerning this notice should be sent to Ted Swem, Alaska Regional Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503. Comments and materials received will be available for public inspection, by appointment,

during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Swem, at the above address (907–786–3562 or FTS 869–3562), or the Endangered Species Coordinator, at the above address (907–786–3505 or FTS 869–3505).

SUPPLEMENTARY INFORMATION:

Background

In the early 1960's the number of peregrine falcons nesting in the United States declined rapidly. Extensive use of organochlorine pesticides is considered the primary factor causing the decline. High levels of organochlorines are lethal to birds, and sublethal doses can induce reproductive failure. DDE, a metabolite of the widely used insecticide DDT, disrupts calcium metabolism in birds. Peregrine falcons accumulating sufficient DDE residues produce abnormally thin-shelled eggs that often break before hatching. Eggshell thinning, in addition to other effects of organochlorines upon reproduction, greatly reduced the nesting success of peregrine falcons. As a result, the recruitment rate of young pregrine falcons was below the number necessary to replace natural and pesticide-caused mortalities, and subsequently peregrine falcon numbers dwindled.

In response to the rapid decline, in 1970 the Service listed Arctic and American peregrine falcons under the Endangered Species Conservation Act of 1969. More extensive protection was provided upon passage of the Endangered Species Act (Act) of 1973 (U.S.C. 1531 *et seq.*). The Act requires that all activities funded, permitted or conducted by Federal agencies are reviewed to minimize impacts to endangered or threatened species. As a result, nest sites were protected and harvest by falconers was prohibited. The restriction of the use of organochlorine pesticides was the most important step taken in aiding the recovery of peregrine falcons. The use of DDT was severely restricted in Canada in 1969 and in the United States in 1973. Further regulations imposed in 1974 greatly reduced the use of the organochlorines aldrin and dieldrin in the United States.

Peregrine falcons were extirpated in parts of North America before the use of organochlorines was restricted. The population declines leveled off quickly in most surviving populations following the restrictions. As organochlorine levels in the environment decreased, breeding success improved and many local populations began to expand. An increase in the number of Arctic peregrine falcons resultyed in the Service downlisting the subspecies to threatened in 1984 (49 FR 10520, March 20, 1984).

Summary of Status

The information and data currently available to the Service show that a substantial recovery of northern peregrine falcons has taken place. Breeding census data show that peregrine falcon numbers are rapidly expanding in many areas. Pesticide residues in eggs have gradually decreased, and pesticide-caused reproductive failure now appears to be rare or absent in northern peregrine falcons. The pattern of widespread recovery is reinforced by increased numerical counts of peregrine falcons seen during autumn migration. The number seen at Assateague Island, Maryland, and Cape May, New Jersey, has increased several fold since the mid-1970's (William Seegar, U.S. Army, in litt., 1990, and Paul Kerlinger, Cape May Bird Observatory, in litt., 1991). However, data are lacking from some regions, and recovery has not progressed to the same extent in all areas studied. A brief summary, by subspecies and region, follows:

Arctic peregrine falcons (*Falco peregrinus tundrius*)—Arctic peregrine falcons breed in northern Alaska, across the tundra regions of northern Canada, and in the ice-free perimeter of Greenland. In northern Alaska, Arctic peregrine falcon numbers have increased about 3-fold since the mid-1970's. The number of pairs occupying nesting territories along the Colville River decreased from 35 in 1959 to a low of about 15 in the mid-1970's. In 1990 over 50 pairs occupied territories in this area (unpubl. Service data). Pesticide levels in Alaskan peregrine falcon eggs are decreasing, and are well below levels at which reproduction is impaired.

The only population of Arctic peregrine falcons known from the Yukon Territory, Canada originally contained about 15 pairs of falcons. By 1981 none remained, but recently one pair returned to the area (David Mossop, Dept. of Renewable Resources, Yukon Territory, in litt., 1991). Large but undetermined numbers of peregrine falcons nest in the Northwest Territories (NWT). Little was known about the peregrine falcons nesting in the NWT before the pesticide-caused decline, and even today, the vast size and remoteness of the area have precluded a complete population survey. Nonetheless, sizable numbers of peregrine falcons are known to nest in the Mackenzie River valley, in scattered locales along the north coast, in the Interior Barrens, and along the northwest coast of Hudson Bay. The density is highly variable among areas, ranging from essentially no peregrine falcons in some areas to a density of 1 pair per 17 square kilometers (11 square miles) in Rankin Inlet (Court et al. 1989). Although still contaminated with organochlorines, peregrine falcons in the NWT are reproducing well (Court et al. 1990), and the number of peregrine falcons is stable or gradually increasing in all areas surveyed in the NWT (Bromley 1988). In Quebec, breeding performance has greatly improved since 1970, and the proportion of suitable cliffs that is occupied by nesting peregrine falcons increased from 44 percent in 1975 to 82 percent in 1985 (Bird and Weaver 1988).

In Greenland, where an estimated 1000–2000 pairs of Arctic peregrine falcons nest, the occupancy rate of suitable cliffs rose from just above 50 percent in the early 1970's to about 90 percent in 1990 (William Mattox, Greenland Peregrine Falcon Survey, in litt., 1990).

American peregrine falcons (*Falco peregrinus anatum*)—This falcon breeds in the boreal forest regions of Alaska, the Yukon Territory, and south of the tree line in northern and eastern Canada to northern Mexico. Wintering birds are usually found from southern United States south into South America. The pattern of decline and subsequent recovery of American peregrine falcons nesting in northern latitudes is more similar to that of Arctic peregrine falcons than to that of other geographic populations of American peregrine falcons. Due to the remoteness of the nesting sites of northern latitude peregrine falcons, financial and logistical constraints have prevented complete population surveys of all potential breeding areas. Nonetheless, some areas have been repeatedly surveyed. In interior Alaska, American peregrine falcon numbers have increased about 3-fold since the mid-1970's. The number of pairs occupying cliffs along the upper Yukon River decreased from about 16 in 1966 to 11 in 1973, and subsequently increased to 35 pairs in 1990 (unpubl. Service data). About 118 pairs resided along the entire Yukon River in Alaska in 1990, and an additional 50 pairs were located along other rivers in interior Alaska. Pesticide levels in peregrine falcons nesting in interior Alaska are decreasing and are well below levels at which reproduction is impaired.

Researchers estimate that the total number of nesting pairs of American peregrine falcons in the Yukon Territory,

Canada has expanded from 80–90 pairs in 1985 to 125–140 pairs in 1990 (Geoff Holroyd, Canadian Wildlife Service, in litt., 1990). However, American peregrine falcons are not currently occupying all regions of the Yukon Territory in which they originally bred. Recent surveys in the Mackenzie River valley in the NWT have shown an increase from 40–50 pairs in 1985 to 96 pairs in 1990 (Geoff Holroyd, in litt., 1990). Unfortunately, little is known of either current or prepesticide population levels in the boreal forest to the east of the Mackenzie valley.

Similar decreases through the early 1970's were found in the rest of North America for the American peregrine falcons. The population in eastern United States became extirpated in the 1960's. Since the mid-1970's, most of the remaining populations seem to have also started to increase. The Service seeks general information on all North American populations. Information is particularly sought on American peregrine falcons found in western North America and northern Mexico.

Request for Data and Comments

The Service requests data on the status of Arctic and American peregrine falcons from all interested parties and all affected local, State, Provincial and Federal governments. The Service needs the most recent data and information on population status and reproductive success. Data for Canada, western United States and Mexico will be used for comparative purposes to assist the Service in reaching a decision on whether to reclassify these northern peregrine falcons. Such data will also be used by other Regional Offices of the Service to assess the status of populations under their jurisdiction. There is also a need for data on the pesticide content of recently collected egg and blood samples, and current patterns of pesticide use in North, Central, and South America. The Service will use the best available scientific and commercial material to evaluate the status of these populations, and if deemed appropriate, to prepare a reclassification proposal. If reclassification is warranted, a proposed rule will be published in the **Federal Register**, including a review of materials used in its preparation.

References Cited

Bird, D.M. and J.D. Weaver, 1988. Peregrine Falcon Populations in Ungava Bay, Quebec, 1980–1985. Pages 45–50 *in* Peregrine Falcon Populations: Their Management and Recovery. Edited by T.J. Cade, C. White, J.H. Enderson, and E.G. Thelander. The Peregrine Fund, Boise.

Bromley, R.G. 1988. Status of Peregrine Falcons (*Falco peregrinus tundruis*) in Kitikmeot, Baffin, and Keewatin Regions, Northwest Territories, 1982–1985. Pages 51–58 *in* Peregrine Falcon Populations: Their Management and Recovery. Edited by T.J. Cade, C. White, J.H. Enderson, and C.G. Thelander. The Peregrine Fund, Boise.

Court, G.S., D.M. Bradley, C.C. Gates, and D.A. Boag. 1989. Turnover and Recruitment in a Tundra Population of Peregrine Falcons, *Falco peregrinus*. Ibis 131:487–496.

Court, G.S., C.C. Gates, D.A. Boag, J.D. MacNeil, D., M. Bradley, A.C. Fesser, J.R. Patterson, G.B. Stenhouse, and L.W. Oliphant. 1990. A Toxicological Assessment of Peregrine Faclons, *Falco peregrinus tundrius*, Breeding in the Keewatin District of the Northwest Territories, Canada. Can. Field Nat. 104(2):255–272.

Murphy, J.E. 1990. The 1985–1986 Canadian Peregrine Falcon, *Falco peregrinus*, Survey. Canadian Field Naturalist 104(2):182–192.

Author

The primary author of this notice is Ted Swem (see ADDRESSES above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 4, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–13972 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review of Certain Kangaroos

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to remove all populations of the red kangaroo (*Marcropus rufus*), the western gray kangaroo (*M. fuliginosus*), and the eastern gray kangaroo (*M. giganteus*), except the subspecies (*M. g. tasmaniensis*), from the list of threatened species under the Endangered Species Act, and to reopen the comment period as part of the continuing status review initiated in the August 5, 1990, **Federal Register** (55 FR 32276).

DATES: The finding announced herein was made on February 28, 1991. Comment and information may be submitted until September 10, 1991.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington DC 20240. The petition finding supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, finding be made on whether the petition presents substantial information indicating that the action may be warranted, and that such a finding be promptly published in the **Federal Register.** If the finding is positive, section 4(b)(3) also requires prompt commencement of a review of the status of the involved species. The Service now announces 90-day finding on a recently received petition.

Background

The petition was submitted by the Wildlife Legislative Fund of America. It was dated November 6, 1990, and received by the Service on the following day. It requests that all populations of the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginosus*), and the eastern gray kangaroo (*M. giganteus*), except the subspecies (*M. g. tasmaniensis*), be removed from the list of threatened species under the Endangered Species Act.

The Service had been previously petitioned on December 20, 1989, by Greenpeace USA, and others "to reinstate the ban on commercial importation of kangaroos products." The Service, in order to respond to the December 20, 1989, petition in a meaningful manner, sent three representatives to Australia in March 1990 to investigate the population status of the three kangaroos species (survey methods, number and trends), and the

implementation of management programs. In addition, the team received comments and developed opinions as to the conservation benefit of management plans allowing the harvest of kangaroos. The Service team spent 12 days meeting with selected members of Parliament, representatives of various nongovernmental organizations, scientists, state and federal natural resource managers, enforcement personnel, grain growers, and ranchers. The team also visited parks, open range, chillers, faunal dealers, ports and exporters. The team presented their findings in a report entitled "Review of Kangaroo Management, Australia, March 1990" on June 5, 1990.

The petitioners in the November 6, 1990, document presented the June 5, 1990, report prepared by Service personnel as the principal basis for their petition. Among other things, the petitioners cite the conservative estimates of the 1987 kangaroo numbers listed in Table 2 of that report (red kangaroos—7.5 million, western gray kangaroos—1.7 million, and eastern gray kangaroos—4.7 million) and the fact that kangaroo conservation programs exist within individual range states as reasons for delisting the species.

In 1974, these three species of kangaroos were listed as threatened pursuant to the Endangered Species Act, and commercial importation of kangaroos, their parts, and products were banned. However, a special rule that would allow such importations after development of adequate State management plans accompanied the listing. In 1981, after management plans including commercial take quotas were strengthened and population survey methods reviewed, the Service accepted the management program and lifted the importation ban.

Since that time, the kangaroo populations in eastern Australia were significantly reduced during the 1982–83 drought. However, following the drought, populations have generally returned to or exceeded 1981 population levels (except for gray kangaroos in Queensland) even as harvest has continued, based on population estimates from comparable surveys of areas subject to harvest (Table 1 in "Review of Kangaroo Management, March, 1990").

The Service believes that Commonwealth government and the individual States continue to make improvements in their kangaroo management capabilities especially in developing survey techniques. The report "Review of Kangaroos Management, March 1990," discusses the adequacy of survey methods. Annual aerial surveys are conducted in New South Wales and South Australia, aerial surveys are conducted by Australian National Parks and Wildlife Service and others every 3 years in Queensland, and the Australian National Parks and Wildlife Service reports on surveys conducted every 3 years in Western Australia.

Furthermore, the Service recognizes the continued improvement in survey methodology and ongoing research to further improve visibility correction factors and takes note of ongoing research to identify indices to alert managers about the need for further harvest restrictions. In addition, the Service notes that in the recent court-mediated agreement, the State of Queensland appears committed to: (1) Maintaining kangaroo populations over their natural range; (2) improving survey procedures; (3) establishing conservative harvest quotas; (4) increasing the number of faunal districts to allow for more appropriate management actions; (5) implementing use of species specific tags; (6) extending their enforcement activity; and (7) making management information more available to the public.

The Service has examined the petition, the report it incorporates by reference, and comments on the report, and given the population status of the threatened kangaroo species, the extent of Australia's system of parks and preserves, and the reports' assessment of State management plans with federal government oversight of the commercial harvest quotas, finds that the petition presents substantial information indicating that the requested action may be warranted.

In accordance with section 4(b)(3) of the Act, the Service reopens the comment period as part of the continuing status review initiated in the August 5, 1990, **Federal Register** (55 FR 32276). During this comment period and status review, the Service will also continue to review issues presented in the petition to reimpose the importation ban kangaroos, their parts, and products as submitted by Greenpeace USA. The Service, prior to making any future finding, will further evaluate several aspects of kangaroo management plans to evaluate threats to the well-being of the species.

The Service is especially concerned that: (1) No population objectives (other than maintaining viable populations) are stated in the published kangaroo management plans; (2) no explanation is offered as how population objectives are to be achieved; (3) the mechanisms regulating and enforcing trade in kangaroo products should be strengthened; (4) the Australian Government has not yet responded to the 27 recommendations listed in the Australian Senate Committee Report; (5) the extent to which Queensland has implemented its commitment to Greenpeace (Australia) to make basic changes in its kangaroo management plan has not been determined; (6) population and habitat surveys in Western Australia have not been evaluated; and (7) the long-term threats to kangaroo populations in those states without export quotas (e.g. Tasmania) are not adequately understood.

The Service will consider the comments received, along with all other available data, in making a finding, required by section 4(b)(3) within 12 months of receipt of a petition presenting substantial information, as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity.

This notice was prepared by Charles W. Dane, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 921–1708).

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subject in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation and Wildlife.

Dated: May 30, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–13973 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 113
Wednesday, June 12, 1991

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

Animal and Plant Health Inspection Service

[Docket No. 91-073]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 20 environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holdidays.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hysattsville, MD, 20782, (301) 436-7612. For copies of the enviornmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requestd under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit number	Applicant	Date issued	Organism	Field test location
90-332-01	U.S. Department of Agriculture, Agricultural Research Service.	04-17-91	Potato plants genetically engineered to contain a gene coding for an insect protein (Cecropin B) that has antibacterial activity.	Idaho, Maine, Minnesota, and North Dakota.
90-351-02	Calgene, Incorporated	04-18-91	Potato plants genetically engineered to express novel genes affecting carbohydrate metabolism.	Idaho.
90-353-01	Ciba-Geigy Corporation	04-18-91	Tobacco plants genetically engineered to express a delta-endo-toxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD1.	North Carolina.
91-035-07	Calgene, Incorported	04-19-91	Cotton plants genetically engineered to express tolerance to the herbicide bromoxynil.	Georgia and South Carolina.
91-023-06 (Courtesy Permit).	Auburn University	04-19-91	*Pseudomonas putida* strain 61.9A.3L which has been modified by the insertion of a genetically engineered transposon Tn5-Lux.	Alabama.
91-018-01	Monsanto Agricultural Company	04-24-91	Soybean plants genetically engineered to express a gene encoding a modified 5-enolypruvyl-shikimate-3-phosphate snythase which is not inhibited by the herbicide glyphosate.	Arkansas, Illinois, Indiana, and Maryland.
91-052-08	Pioneer Hi-Bred International, Incorporated.	04-24-91	Alfalfa plants genetically engineered to express the alfalfa mosaic virus (AMV) coat protein gene.	Iowa.
90-360-01	U.S. Department of Agriculture, Agricultural Research Service.	04-24-91	Potato plants genetically engineered to express an enzyme that confers tolerance to the herbicide bromoxynil.	Idaho.

Permit number	Applicant	Date issued	Organism	Field test location
91-007-04	Monsanto Agricultural Company	04-26-91	Potato plants genetically engineered to express a delta-endo-toxin protetin from *Bacillus thuringieneis* subsp. *tenebrionis*.	Idaho, Maine, and Michigan.
91-042-02 renewal of Permit 89-290-01, issued on 02-16-90.	Auburn University	04-26-91	*Xanthomonas campestris* pv. *campestris* genetically engineered to contain a gene to confer bioluminescence as a marker.	Alabama.
91-052-07	Pioneer Hi-Bred International, Incorporated.	04-26-91	Alfalfa plants genetically engineered to express the alfalfa mosaic virus (AMV) coat protein gene.	Washington.
91-007-08	Biosource Genetics Corporation	05-01-91	Tobacco mosaic virus genetically engineered to express either alpha-hemoglobin, beta-hemoglobin, trichosanthin, or alpha-amylase genes, introduced into tobacco.	North Carolina.
91-016-01	DuPont Agricultural Products	05-01-91	Tobacco plants genetically engineered to contain two marker genes, the kanamycin resistance gene and the beta-glucuronidase gene.	Delaware and Texas.
91-025-01	BioTechnica Agriculture Incorporated	05-01-91	Corn plants genetically engineered to contain a chimeric marker gene and storage protein gene.	Illinois, Iowa, Minnesota, and Nebraska.
91-025-02	DuPont Agricultural Products	05-01-91	Cotton plants genetically engineered to express a tolerance to sulfonylurea herbicides.	Maryland and Mississippi.
91-007-01	Monsanto Agricultural Company	05-02-91	Cotton plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Alabama.
91-044-01	Campbell Institute for Research and Technology.	05-02-91	Tomato plants genetically engineered to express an antisense poly-galacturonase (PG) gene.	California.
90-345-01	U.S. Department of Agriculture, Agricultural Research Service.	05-02-91	Potato plants genetically engineered to contain a gene encoding for an insect protein (Cecropin B) that has anti-bacterial activity.	Idaho, Maine, Minnesota, and North Dakota.
90-345-02	Washington State University	05-02-91	Potato plants genetically engineered to contain disease resistance response genes from the pea.	Washington.
91-007-06	U.S. Department of Agriculture, Agricultural Research Service.	05-03-91	Potato plants genetically engineered to express a modified chicken lysozyme gene.	Idaho, Maine, Minnesota, and North Dakota.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 6th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-13968 Filed 6-11-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 91-051]

Guatemala MOSCAMED Program Environmental Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared and is making available a final environmental analysis for the Guatemala MOSCAMED Program.

ADDRESSES: A copy of the final environmental analysis, the final economic analysis, and the agency's record of decision may be obtained by writing to the following individuals: Mr. Michael T. Werner, Deputy Director, Environmental Analysis and Documentation, BBEP, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; Mr. Robert Strong, Regional Director, International Services, APHIS, USDA, American Embassy-Mexico, Paseo De La Reforma 305, room 225, Col. Cuauhtemoc, 06500 Mexico, D.F.; and Mr. Marshall Kirby, Area Director, International Services, APHIS, USDA, American Embassy-Guatemala, Avenida La Reforma 7-01, Zona 10, Guatemala City, Guatemala.

These documents are available for review at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. They are also available for review in the commercial libraries of the American embassies in Mexico and Guatemala.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Analysis and Documentation, BBEP, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8892.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared and is making available a final environmental analysis for the Guatemala MOSCAMED Program. We developed the final environmental analysis with full consideration to the broad range of public comments received about the program.

Background

The Mediterranean fruit fly or Medfly ("Moscamed" in Spanish), *Ceratitis capitata* (Weidemann), is a major pest of agriculture throughout many parts of the world. Originally native to Africa, it now occurs in areas of Africa, the Mediterranean, Europe, Oceania, South America, Central America, and Hawaii. The Medfly has been introduced to the U.S. mainland intermittently since its initial introduction in 1929. However, eradication programs have prevented it from becoming established here. From 1929 to 1990, State and Federal expenditures for eradication programs on the United States mainland totaled approximately $270 million.

The Medfly became established in Costa Rica in 1955. By 1977, the Medfly had expanded its range from its original point of introduction to southern Mexico. In 1977, the Governments of the United States, Guatemala, and Mexico initiated a cooperative program known as MOSCAMED to eradicate the Medfly from Mexico and Guatemala and halt its northern spread. Beginning in Mexico in 1979, the MOSCAMED program used a combination of malathion bait spray, sterile Medflies released into the wild populations, and regulatory procedures in its eradication efforts. In 1982, Mexico declared the Medfly eradicated from its territory, and the eradication effort was extended in Guatemala.

On December 22, 1989, we published a notice in the **Federal Register** advising the public that we had prepared a draft environmental analysis for the Guatemala MOSCAMED Program, that we were seeking written comments on the draft environmental analysis, and that we would also hold a public meeting to further promote public involvement in the development of the final environmental analysis. We have considered all the comments we received during the 60-day comment period, and during the January 22, 1990, public meeting held in Washington, DC. We have made various revisions as a result of the comments, and have produced a final environmental analysis and agency record of decision. These are available by writing to the persons listed above under "**ADDRESSES.**" An economic analysis of the Medfly program in Guatemala is also available from these persons.

Alternatives

The following program alternatives are discussed in the final environmental analysis: (1) No action, (2) Isthmus of Tehuantepec stable barrier zone (Mexico), and (3) eradication of the Medfly from Guatemala. Control alternatives identified and discussed in the final environmental analysis include: (1) No action; (2) sterile insect technique, (3) chemical control, (4) cultural control, (5) regulatory control, and (6) integrated control.

Our preferred program alternative is the eradication of Medfly from Guatemala. Our preferred method for accomplishing this objective is integrated control, which combines one or more of the control alternatives listed above. These preferences are reflected in the agency's record of decision.

Integrated control is a systems approach that takes into consideration anticipated economic, ecological, and sociological consequences. This systems approach will allow us to make selections in control methodologies that are environmentally sound and appropriate for existing conditions and treatment sites.

Major Issues

Following are some of the major issues discussed in the final environmental analysis:

(1) Potential impacts of the alternatives on the biological environment, including target and nontarget species.

(2) Potential impacts of the alternatives on the physical environment, including soil, water quality, and air quality.

(3) Potential impacts of the alternatives on the human environment, especially health and safety, culture, and economy.

Done in Washington, DC, this 6th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-13967 Filed 6-11-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Short Supply Regulations—Unprocessed Western Red Cedar.

Form Number: Agency—EAR section 777.7; OMB Control No. 0694-0025.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 33 respondents; 17 reporting hours; Average hours per respondent is ½ hour.

Needs and Uses: This information is collected as supporting documentation for license applications to export western red cedar logs to enforce the Export Administration Act's prohibition against the export of such logs harvested from State or Federal lands.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-13975 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Numerical Control Units, Numerically Controlled Machine Tools, Dimensional Inspection Machines, Direct Numerical Control Systems, Specially Designed Assemblies, and Specially Designed Software.

Form Number: Agency—EAR section 776.11; OMB Control No. 0694-0024.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 58 respondents; 29 reporting hours; Average time per respondent is 30 minutes for reporting.

Needs and Uses: This information requested in this collection is needed for assurance that these commodities have no military or nuclear end-uses. It is needed for the licensing officer to make a decision on the license application.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5237, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-13976 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Short Supply Regulations—Petroleum (Crude Oil).

Form Number: Agency—EAR Section 777.6; OMB Control No. 0694-0027.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 8 respondents; 32 reporting hours. Average hours per respondent is 4.

Needs and Uses: This information is collected as supporting documentation for license applications to export petroleum (crude oil) and used by licensing officers to determine compliance with the 5 statutes governing this collection.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's of Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-13977 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities.

Form Number: None; OMB-0648-0151.

Type of Request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Burden: 21 respondents; 1,210 reporting hours; average hours per response—29.5 hours.

Needs and Uses: This information is used to determine whether to allow an incidental taking of marine mammals and to monitor any authorized taking. The affected public is U.S. citizens that incidently take marine mammals (other than in commerical fishing operations).

Affected Public: Individuals or hosueholds, state or local governments, business or other for-profit, Federal agencies or employees.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 6, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-13978 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-427-098]

Anhydrous Sodium Metasilicate From France; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. This review covers Rhone Poulenc Chimie de Base, a manufacturer/exporter of this merchandise to the United States, and the period January 1, 1990 through December 31, 1990. We have preliminarily determined that there were no shipments during the review period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Lisa M. Boykin or Robert J. Marenick, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1991, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (56 FR 1793) of the antidumping duty order on anhydrous sodium metasilicate from France. On January 18, 1991, the petitioner, the PQ Corporation, requested an administrative review of Rhone Poulenc. We initiated the review, covering January 1, 1990 through December 31, 1990, on February 19, 1991 (56 FR 6621). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Act"). The final results of the last administrative review in this case were published in the **Federal Register** on December 11, 1989 (54 FR 50788).

Scope of the Review

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include

waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under HTS item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Preliminary Results of the Review

Because there were no shipments during this review, we based our determination of the cash deposit rate on the last margin found for Rhone Poulenc. We preliminarily determine that a margin of 60 percent exists for Rhone Poulenc during the period January 1, 1990 through December 31, 1990.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter. Parties to the proceeding may submit prehearing briefs and/or writen comments not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

Further, as provided for by section 751(a)(1) of the Act, a cash deposit of estimated antidumping duties of 60 percent shall be required for Rhone Poulenc. The cash deposit rate for all other manufacturers/exporters shall be 60 percent. This is the highest non-best information rate from a prior review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 of the Department's regulations.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13981 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-806]

Final Determination of Sales at Less Than Fair Value: Silicon Metal From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) has determined that silicon metal from Brazil is being, or is likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determination. We have also directed the Customs Service to continue to suspend the liquidation of all entries of silicon metal from Brazil as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or James Meeder, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 377-3695 or (202) 377-4929, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that silicon metal from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the publication of our affirmaive preliminary determination on March 29, 1991, (56 FR 13118), the following events have occurred.

On March 29, 1991, the Department sent a deficiency letter to Companhia Brasileira Carbureto de Calcio (CBCC) based on its response to Section D of the questionnaire. On April 4, 1991, Camargo Correa Metais, S.A. (CCM) submitted its response to the Department's Section D supplemental questionnaire issued on March 26, 1991. On April 4, 1991, petitioners opposed CBCC's March 28, 1991, request that the Department correct an alleged ministerial error in the preliminary determination that critical circumstances existed with respect to exports of silicon metal by CBCC (see Comment 22). Petitioners also submitted issues for the Department's verification in Brazil on April 4, 1991.

On April 5, 1991, CCM submitted revised data for its April 4, 1991, Section D response. On April 5, 1991, CBCC submitted additional data for its Section D response, in response to the Department's March 29, 1991, deficiency letter. CCM requested a public hearing for the above-referenced investigation on April 5, 1991. Petitioners also requested a public hearing on April 8, 1991. On April 9, 1991, Dow Corning Corporation, an interested party in this investigation, requested the opportunity to participate in the hearing, and CBCC requested a hearing on April 11, 1991.

On April 12, 1991, CCM submitted revised data to the Department. On April 17, 1991, petitioners opposed Dow Corning's and CBCC's requests for a public hearing on the basis of untimeliness. On May 6, 1991, CCM requested that the Department disclose its preliminary below cost and constructed value analysis for CCM. We informed CCM that, because we initiated our below cost of production investigation later than for CBCC, we did not consider CCM's cost data for the preliminary determination and, therefore, there was no analysis to disclose.

We conducted verification of the questionnaire responses between April 8 and April 19, 1991, in Brazil.

On May 7, 1991, the Department extended due date for case briefs in the above-referenced investigation to May 17, 1991. Petitioners and respondents filed case briefs on May 17, 1991, and rebuttal briefs on May 21, 1991. A public hearing was held on May 23, 1991.

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1990, through August 31, 1990.

Such or Similar Comparisons

We established one such or similar category of merchandise, consisting of silicon metal, in accordance with section 771(16) of the Act. Comparisons were made on the basis of the following grade classifications: (1) Chemical grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.00 through 0.65 percent; (2) primary-aluminum grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.66 through 1.00 percent; (3) secondary-aluminum grade, haveng a silicon content of 98.00 through 98.49 percent; and (4) other, with a silicon content of 96.000 through 97.99 percent.

Standing

In a letter dated January 18, 1991, the Aluminum Recycling Association (ARA), the Aluminum Smelting and Refining Company, Inc. (ASRC), and Timco, importers of silicon metal and interested parties in this investigation, challenged petitioners' standing to file on behalf of the domestic producers of the like product. In a letter dated January 23, 1991, and its case brief of May 17, 1991, CCM also challenged petitioners' standing to file on behalf of the domestic producers of the like product. These parties claim that petitioners do not regularly produce or sell silicon metal with a silicon content below 97.50 percent. Therefore, they argue that silicon metal having a silicon content of less than 97.50 percent should be excluded from this investigation because petitioners lack standing with respect to such merchandise within the meaning of 19 USC 1677(a)(2).

The ITC has preliminarily determined that there is one like product, which includes all of the merchandise defined by the scope of this investigation. Silicon metal with a silicon content between 96 and 97.50 percent is within the class or kind of merchandise defined by the scope of this investigation. An interested party is not required to produce every product within the class or kind of merchandise included in the scope of the investigation in order to have standing. ARC, ARSC, and Timco do not challenge that petitioners produce silicon metal in the higher range. Accordingly, given that petitioners, as producers of the subject merchandise, are interested parties filing on behalf of the domestic industry, we have determiend that petitioners have standing.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of silicon metal from Brazil. We preliminarily determined that critical circumstances existed for CBCC, and that critical circumstances did not exist for CCM and all other producers/exporters/manufacturers of silicon metal from Brazil.

Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

In determining history or importer knowledge of dumping, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise or margins of 25 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act. See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Determination of Sales at Less Than Value, 56 FR 241 (January 3, 1991).

For CBCC and CCM, because the dumping margins exceed 25 percent, we determine that importer knowledge of dumping exists for silicon metal from Brazil.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the filing of a petition increase by at least 15 percent over imports during a comaparable period immediately preceding the filing of a petition, we consider them massive.

For CBCC and CCM, in determining whether there have been massive imports of silicon metal, we relied upon the company-specific export data submitted by the companies. Pursuant to 19 CFR 353.16(g), we compared the export volumes for June through August 1990 as the base period, and September through November 1990 as the comparison period. This was the most current period prior to the preliminary determination for which company-specific shipment data were available.

Based on our analysis of the exports of silicon metal submitted by CBCC and CCM, we find that exports of silicon metal by CBCC from the base period to the comparison period have increased by at least 15 percent. We also examined CBCC's export data to ensure that the increase in imports did not simply reflect seasonal trends. The data do not indicate seasonal increases in shipments to the extent of the increases during the comparison period. Therefore, in accordance with 19 CFR 353.16(f)(2), we find that exports by CBCC have been massive over a relatively short period of time. We find that exports of silicon metal by CCM have not increased by at least 15 percent. Therefore, we find that exports by CCM have not been massive over a relatively short period of time.

Because the dumping margin for CBCC is sufficient to impute knowledge of dumping, and because imports have been massive, in accordance with section 735(a) of the Act, we find that critical circumstances exist with respect to exports of silicon metal by CBCC.

Based on our analysis of the cumulative export data for silicon metal submitted by both CCM and CBCC, we find that cumulative exports of silicon metal by CCM and CBCC have not increased. Therefore, in accordance with 19 CFR 353.16(f)(2), we find the exports by all producers/manufacturers/exporters other than CBCC have not been massive over a relatively short period of time. As a result, we find that critical circumstances do not exist with respect to exports of silicon metal by all producers/manufacturers/exporters other than CBCC.

Fair Value Comparisons

To determine whether sales of silicon metal from Brazil to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

A. CCM

We based the USP on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to

importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price for CCM based on packed, C&F prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign handling, and foreign inland insurance, in accordance with section 772(d)(2) of the Act. Although the terms of sale were C&F, CCM reported and we verified that charges for ocean freight were not included in the gross unit price.

In its response, CCM converted the prices, charges, and adjustments per gross ton of silicon metal into amounts per ton of pure silicon. It did this by dividing the gross ton amounts by the percentage silicon content per gross ton of silicon metal. CCM argues that silicon metal will command a price that is directly related to its pure silicon content. The Department is not persuaded that prices, charges, and adjustments are established in accordance with the specific silicon content per gross ton of silicon metal. No other party in this or the other concurrent silicon metal investigations has indicated that prices, charges, and adjustments are established on the basis of pure silicon content. Therefore, for purposes of the final determination, we have converted all of CCM's reported prices, charges, and adjustments to amounts per gross ton of silicon metal.

B. CBCC

We based the USP on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because ESP methodology was not indicated by other circumstances. We calculated purchase price for CBCC based on packed, C&F prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, brokerage, wharfage, handling, stevedoring, and inspection fees, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

In order to determine whether there were sufficient sales of silicon metal in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of the such or similar category (*i.e.*, all silicon metal) to the aggregate volume of third country sales, in accordance with section 733(a)(1) of the Act. For both CCM and CBCC, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therfore, for both CCM and CBCC, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

As noted in the "Case History" section of this notice, petitioners alleged that home market sales were made at less than the cost of production (COP) and that constructed value (CV) should be used to compute FMV. Because we have reasonable grounds to believe or suspect that both CCM and CBCC sold in the home market at less than the COP, in accordance with section 773(b) of the Act, we initiated cost investigations on each company.

We determined Brazil's economy to be hyperinflationary. In order to eliminate the distortive effect of inflation, the Department has developed a practice of calculating separate COPs and CVs for each month. See, *e.g.*, Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order, Tubeless Steel Disc Wheels from Brazil, 53 FR 34566, (September 7, 1988) (*Disc Wheels*).

A. CCM

In order to determine whether home market sales were above the COP, we calculated the monthly COPs on the basis of CCM's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by CCM except in the following instances where the costs were not appropriately quantified or valued: CCM's miscellaneous material costs were adjusted to reflect replacement costs; we removed ICMS value-added taxes from the submitted costs, as they are not a cost incurred in the home market; we added IPI taxes to the submitted costs; and we recalculated inventory holding gains and losses based on information on the record.

We compared individual home market prices with the monthly COPs. We found that all sales in the home market were made at prices below the COP. Therefore, we based FMV on monthly CVs.

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CVs include materials, fabrication, general expenses, profit and packing. We used the following as the basis for calculating CV:

(1) CCM's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act; and

(2) the statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as CCM's profit was less than eight percent of the sum of general expenses and the cost of manufacture.

We used CCM's submitted monthly costs except in the following instances where the costs were not appropriately quantified or valued: we adjusted CCM's miscellaneous material costs to reflect replacement costs; we added ICMS and IPI taxes paid on inputs to the submitted costs; we recalculated inventory holding gains and losses based on information on the record; we included expenses incurred by CCM's parent companies on behalf of CCM; and we added packing costs.

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56(a). In addition, as described in the DOC Position to Comment 20, when the U.S. date of sale occurred in a calendar month preceding the date of shipment, we made a circumstance of sale adjustment to account for hyperinflation between the exchange rate on the date of sale and the exchange rate on the date of shipment. Because the CV is calculated as of the date of exportation (shipment), we made this adjustment to eliminate the artificial distortion of value caused by the rapid depreciation of Brazil's currency. See Disc Wheels.

B. CBCC

In order to determine whether home market sales were above the COP, we calculated the COP on the basis of CBCC's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by CBCC except in the following instances where the costs were not appropriately quantified or valued: we adjusted CBCC's material costs to reflect replacement costs; we increased chemical analysis costs to reflect allocation ratios noted at verification; we allocated G&A expenses based on cost of sales as reflected in the financial statements; we increased G&A expenses to include parent company costs; we included finance costs as reflected on the financial statements; and we recalculated inventory holding gains and losses based on information on the record.

We found that all sales in the home market were made at prices below the COP. Therefore, we based FMW on CV.

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CVs include materials, fabrication, general expenses, profit and packing. We used the following as the basis for calculating CV:

(1) CBCC's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act; and

(2) The statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as CBCC's profit was less than eight percent of the sum of general expenses and the cost of the manufacture.

We used CBCC's submitted monthly costs except in the following instances where the costs were not appropriately quantified or valued: we adjusted CBCC's material costs to reflect replacement costs; we added ICMS paid on inputs to the submitted costs; we increased chemical analysis costs to reflect allocation ratios noted at verification; we allocated G&A expenses based on cost of sales as reflected in the financial statements; we increased G&A expenses to include parent company costs; we included finance costs as reflected on the financial statements; and we recalculated inventory holding gains and losses based on information on the record.

We added packing costs based on the best information available (BIA) as described in the DOC Position to Comment 9 in the "Interested Party Comments" section of this notice. We also made circumstance of sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.16(a). In addition, as described above for CCM, when the U.S. date of sale occurred in a calendar month preceding the date of shipment, we made a circumstance of sale adjustment to account for hyperinflation between the exchange rate on the date of sale and the exchange rate on the date of the shipment.

Currency Conversion

No certified rates of exchange, from the Federal Reserve Bank of New York, were available for the POI. In place of those rates, we used the daily official exchange rates for Brazil published by the Bank of Brazil.

Verification

As provided in section 776(b) of the Act, we verified all information provided by the respondents by using standard verification procedures, including on-site inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1. Petitioners argue that CBCC's reported U.S. sale dates are incorrect and should be revised to reflect the dates on which all major terms of sale were agreed upon. Petitioners base their argument on the Department's discovery at verification that shipment from the plant to the port of one reported U.S. sale began before the date of the Export Sale Authorization, the document CBCC used to determine date of sale. Petitioners argue that for this sale, the Department should use the date that shipment from the plant began as the date of sale. For all other export sales, petitioners argue that the Department should use as date of sale a date at least two weeks prior to the date of shipment from the plant, as best information available (BIA).

CBCC asserts that it properly determined its U.S. sale dates. CBCC maintains that it ships silicon metal to the port before it has been sold to a particular customer or designated for a particular contract. Only when the merchandise arrives at the port is it assigned to a specific export order.

DOC Position. We agree with respondent. Although merchandise may have been shipped to the port while negotiations with the U.S. customer were ongoing, we found at verification that CBCC did not recognize the sale until the director of the company issued the Export Sales Authorization, indicating that all terms of sale had been agreed to by the parties. We used the date of the Export Sales Authorization as the date of sale for all relevant CBCC U.S. sales.

Comment 2. Petitioners maintain that the Department should deduct from CBCC's U.S. price inspection fees that were required by the freight company and the licensed exporter. CBCC had reported these inspection fees as "other expenses" in its response.

DOC Position. We agree with petitioners. We found at verification that CBCC incurred these inspection fees as a condition of shipment imposed by the freight company. Because these fees area a condition for movement of the merchandise, we consider them to be a movement expense and have deducted them from U.S. price, in accordance with section 772(d)(2) of the Act.

Comment 3. Petitioners argue that the Department should convert CBCC's foreign inland freight expenses to U.S. dollars using exchange rates for the dates on which CBCC's silicon metal was shipped from its plant, not those for the dates of exportation.

CBCC maintains that the Department should convert freight expenses using the exchange rate in effect on the date of exportation because that is the date CBCC surrenders title and has the right to receive payment under its contract.

DOC Position. We agree with respondent. We found at verification that CBCC is billed by its freight company after shipment to the port is complete and often after exportation has occurred. In investigations involving hyperinflationary economies, the Department converts movement charges associated with U.S. sales on the date such charges become payable. See Industrial Nitrocellulose from Brazil, 55 FR 23120 (June 6, 1990); Disc Wheels; and Frozen Concentrated Orange Juice from Brazil, 52 FR 8327 (March 17, 1987) (FCOJ). Because movement charges become payable on or after the date of exportation, we have converted CBCC's movement charges on the reported dates of shipment, which are the dates of exportation.

Comment 4. Petitioners argue that CBCC's U.S. prices should be reduced to reflect any discount of CBCC's receivables when it borrowed against export receivables.

CBCC maintains that it did not discount its receivables. Since it receives cash for most of its sales, there are no receivables and there is nothing to discount. In cases where CBCC borrowed money through an advance on exchange contrct (ACC), the ACC loan acted as a discount on a letter of credit, which is not a receivable.

DOC Position. We agree with respondent. When CBCC borrowed through an ACC, it borrowed against a letter of credit, not against outstanding receivables. Under an ACC, the lender agrees to give the borrower the cruzerio equivalent of the U.S. dollar-denominated letter of credit using the exchange rate on the date of the issuance of the loan. The lender then receives the U.S. dollars on the maturity date of the letter of credit, or date of payment.

Comment 5. Petitioners argue that CBCC's and CCM's volume of home market sales is so small in relation to U.S. sales as to not provide an adequate basis for FMV.

CBCC and CCM argue that their respective home markets are viable and that the Department should use their home market sales for comparison to U.S. sales.

DOC Position. We agree with respondents. As described in the "Foreign Market Value" section of this notice, both CBBC's and CCM's home markets are viable within the meaning

of 19 CFR 353.48(a). However, we have determined that all of CBCC's and CCM's home market sales were made at prices below the COP. Therefore, we have compared CV to CBCC's and CCM's U.S. prices.

Comment 6. Petitioners argue that the Department should not make a circumstance of sale adjustment with regard to credit expenses when CV is compared to CBCC's U.S. prices. Petitioners maintain that since CBCC sells in the home market on a cash basis and reported no credit expenses, the Department should add U.S. credit costs to CV as BIA. Petitioners further argue that if the Department does impute credit expenses for CV, it should insure that these expenses, in dollar terms, are no greater than U.S. credit based in BIA.

CBCC maintains that the Department verified that CBCC had incurred no credit expenses on its home market sales. Therefore, the Department should not add credit to CV.

DOC Position. We agree with respondent. We found at verification that CBCC's home market customers paid at sight and that there were no outstanding receivables with respect to these sales. Because we use home market selling expenses when calculating constructed value, we did not include credit expenses in the calculation, since none were incurred in the home market. However, as described in the "Foreign Market Value" section of this notice, we made a circumstance of sale adjustment to account for imputed credit expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(a)(2).

Comment 7. Petitioners contend that the credit expenses CBCC reported on three U.S. sales are actually price reductions. As such, petitioners argue that the Department should treat them as price discounts or rebates and deduct them from U.S. price. Petitioners argue further that the Department should impute credit expenses on the period between date of shipment from the plant and the date of customer payment.

CBCC maintains that it did not give its U.S. customers rebates or discounts for early payment. CBCC contends that it adjusted the amount of interest due for these three sales to reflect the actual date of payment. In addition, CBCC maintains that the Department should not impute credit expenses on letter of credit sales, since such sales involve no credit risk to the seller. However, should the Department impute credit expenses on such sales, CBCC argues that the Department should use the period between date of exportation and date of payment as the credit period.

DOC Position. We agree with petitioners with regard to the price reductions.

We found at verification that for three U.S. sales, the customer paid earlier than the agreed-upon terms of payment and requested that CBCC adjust the price because of early payment. CBCC granted this price adjustment and erroneously reported it as a credit expense in its response to the Department's questionnaire. We determined that this is an early-payment discount and have deducted it from U.S. price.

We disagree with respondent with regard to credit expenses on letter of credit sales. Regardless of how a customer pays, a company incurs an imputed cost while the payment is outstanding, regardless of who bears the risk. Therefore, we have calculated imputed credit expenses on CBCC's letter of credit sales for the period between the date of shipment and the date payment was received by CBCC.

We ascertained at verification that numerous shipments by truck can be necessary for a complete order to arrive at the port. We also found that the freight company did not bill CBCC until shipment of an order was complete, as described in the DOC Position to Comment 3. Therefore, we have determined that CBCC's payment period begins on the reported date of shipment. See Mechanical Transfer Presses from Japan, 55 FR 335 (January 4, 1990).

Comment 8. Petitioners contend that because CBCC never provided the calculations showing how it determined the interest rate it used in calculating U.S. credit expenses, the Department should recalculate U.S. credit expense using CCM's short-term borrowing rate as BIA.

DOC Position. We agree with petitioners. The Department has recalculated CBCC's imputed U.S. credit expenses using an adjusted price and CCM's U.S. dollar short-term borrowing rate as BIA and the days between the date of shipment and date of payment as the credit period.

Comment 9. Petitioners maintain that because the Department was unable to verify CBCC's claimed packing expenses, it should use CCM's packing costs as BIA, as it did for the preliminary determination. Moreover, petitioners argue that when packing costs are converted to U.S. dollars, it should use the same exchange rates used in converting FMV to U.S. dollars because any other rate would distort the calculation.

DOC Position. We agree with petitioners in part. As in the preliminary determination, we have used CCM's packing costs as BIA. However, we converted packing expenses using the exchange rate in effect on the date of shipment, as this is the best estimate of the U.S. dollar value of the packing expenses when they are incurred.

Comment 10. Petitioners argue that the Department should not make a circumstance of sale adjustment for taxes paid in the home market but not on exports. Petitioners assert that this practice is not authorized by statute.

CCM maintains that the Department should make a circumstance of sale adjustment for these taxes.

CBCC argues that the Department should deduct the ICMS tax from home market prices.

DOC Position. We made no adjustment because we have based FMV on CV, and CV does not include the ICMS tax paid by the home market customer.

Comment 11. Petitioners argue that the ICMS rate should be applied strictly to the U.S. selling price to calculate the tax to be added to U.S. price.

CCM argues that the Department should calculate the U.S. price and FMV adjustments for these taxes based on the verified tax rates. In addition, CCM argues that because the ICMS amount for home market sales is calculated by applying the ICMS rate on the "tax-inclusive" gross selling price, the tax added to U.S. sales should be calculated using a ratio that applies the same principle.

DOC Position. We made no adjustment because we have based FMV on CV, and CV does not include the ICMS tax paid by the home market customer.

Comment 12. Petitioners argue that ocean freight and other costs incurred after shipment from CCM's factory should be excluded from the tax base when calculating the addition to U.S. price of home market taxes not collected on export sales.

CCM maintains that the Department should calculate the adjustment to U.S. price for Brazilian taxes using the full invoice price, inclusive of all charges.

DOC Position. We made no adjustment because we have based FMV on CV, and CV does not include the ICMS tax paid by the home market customer.

Comment 13. Petitioners contend that CCM's reported U.S. sale dates are incorrect and should be revised to reflect the dates on which all major terms of sale are agreed upon. Petitioners note that in its response, CCM claimed that it used the date of purchase order or date of invoice as date of sale. However, the Department

found at verification that CCM actually used the date on which the freight arrangements were finalized as date of sale. Petitioners argue that price, quantity, and product specifications were all set prior to the date that CCM selected as date of sale for reporting purposes. Therefore, petitioners assert that the Department should establish BIA sale dates.

CCM argues that the Department should consider the date on which shipping arrangements were finalized as the date of the U.S. sale.

DOC Position. We agree with CCM. CCM's terms of sale for U.S. sales were C&F, meaning that freight expenses are included in the price. We found at verification that, although other components of a sales negotiation may have been concluded before the shipping arrangements, negotiation of shipping terms continued. The customer was kept informed of the negotiation process until the time that CCM sent the shipping confirmation to the customer. Because in this investigation we consider the terms of shipment to be an important component in sales where the terms of sale are C&F, we have accepted CCM's reported sale dates.

Comment 14. Petitioners maintain that the Department should calculate CCM's home market credit expenses by applying the ANDIMA inflation-neutral interest rate to CCM's base sales price, excluding any addition for interest charged the purchaser by CCM.

CCM argues that the Department should not use the ANDIMA rate to calculate home market imputed credit expenses. CCM maintains that the ANDIMA rate is a rate that banks pay depositors for overnight deposits, and does not reflect the interest rate that a borrower would pay for short-term credit. Instead, the Department should use the most recent monthly inflation rate, plus a two percent premium. Alternatively, CCM proposes that the Department use either an interest rate that CCM used in a dispute settlement for one of its sales during the POI, or published data regarding isolated examples of lending rates by Brazilian banks to large, preferred customers.

DOC Position. We agree with petitioners. At verification, CCM provided insufficient evidence supporting the use of an inflation rate plus a premium as a surrogate for a short-term interest rate in calculating imputed credit expenses in the home market. Therefore, we have determined that the interest rates used to calculate such expenses should be based on BIA.

As an alternative, CCM suggest we use an interest rate negotiated in a dispute between CCM and one of its customers over the quantity shipped. The customer admitted that it had erred in this dispute and agreed to pay the invoice amount and interest on the withheld payment. We have determined that this agreement bears no relationship to the interest rates that may have been available commercially on the dates of sale of the sales in question. Rather, it was simply a rate that CCM negotiated with its customer and was not offered by any commercial lender to CCM.

As a second alternative, CCM suggests that the Department calculate home market credit expenses using interest rates on certain loans offered by banks to large preferred customers during the POI. However, CCM itself admits that these loans were non-market transactions and were essentially an accommodation to preferred customers. Again, we have no indication that such rates would have been available to CCM during the period in question.

Therefore, as BIA, we have used the ANDIMA rates supplied by Brazil's Banco Nacional to the Department during verification in the concurrent countervailing duty investigation of silicon metal from Brazil. The ANDIMA is a certificate of interbank operation which averages various economic indicators and the daily average cost of operations of numerous banks. The interest rates determined pursuant to the ANDIMA are monthly average interest rates, not overnight rates as asserted by CCM, although they may be applied to overnight deposits.

Comment 15. CCM maintains that the Department should calculate imputed home market credit expenses using the ICMS-inclusive home market price. In the preliminary determination, the Department calculated these expenses on an ICMS-exclusive price. CCM maintains that, between date of shipment and date of payment, CCM financed its customer for the full amount of the invoice, inclusive of the ICMS that the customer paid to CCM. CCM considers the ICMS it receives from the customer to be real revenue, because its ICMS payments on purchases always exceed its ICMS receipts, due to its small number of home market sales. CCM asserts that the ICMS collected from home market sales either contributes to the recovery of the company's total cost of producing and selling silicon metal, or represents profit to the company.

CCM also argues that the Department should use the correct payment period in calculating imputed home market credit costs.

Petitioners argue that the Department should calculate CCM's home market credit expense on the home market price net of ICMS tax. Petitioners assert that CCM incurs no credit expense with respect to the ICMS tax because: (1) It never remits the ICMS collected on home market sales to the government; and (2) CCM is not liable to pay ICMS on its sales until the end of the month following the sale date.

Petitioners maintain that if the Department calculates home market credit on an ICMS-inclusive price, credit expenses in the U.S. market should be calculated on a price that includes the theoretical tax amount.

DOC Position. We agree with respondent. The ICMS incident to a home market sale is outstanding until that time that the customer pays for its merchandise. Until the customer pays, CCM cannot use the ICMS collected on the sale to offset ICMS it has paid on purchases of materials used in the production of the subject merchandise. Accordingly, there is an inherent cost in maintaining an outstanding amount of ICMS due to CCM's receivables. Therefore, we have included the ICMS in the home market price when calculating imputed credit expenses.

In addition, we have not included the theoretical tax in the U.S. price when calculating imputed credit expenses on U.S. sales. Credit expenses can only be imputed on the actual amount of the receivable outstanding to the customer. It would, therefore, be improper to calculate imputed credit expenses on a U.S. price that includes a theoretical tax amount for which the customer is not liable.

Comment 16. Petitioners argue that the Department should define the scope of investigation to include "silicon metal" with a silicon content of less than 96 percent. Petitioners maintain that the petition and a letter supplementing the petition did not set a minimum silicon content. Petitioners assert that Census Bureau import data show that substantial quantities of silicon metal containing less than 96 percent silicon already have entered the United States. Moreover, petitioners point to additional evidence that demonstrates that silicon metal containing less than 96 percent silicon is being imported into the United States.

Petitioners urge the Department not to specify a minimum silicon content. However, should the Department set a minimum content, petitioners maintain that it should be 90 percent. If the Department declines to alter the scope, petitioners suggest that the Department recognize that imports of a product with

less than 96 percent silicon may be covered by an order issued in this proceeding as a "minor alteration" of the subject merchandise within the meaning of 19 U.S.C. 1677j(c).

CCM argues that the Department should not expand the scope of investigation because: (1) Petitioners' request to expand the investigation is untimely; (2) any commercial similarities between the merchandise subject to the preliminary determination and merchandise having less than 96.00 percent silicon are irrelevant in a case such as this where the non-investigated merchandise existed and was known to petitioner at the time the investigation began; and, (3) inclusion of merchandise with less than 96.00 percent silicon would be contrary to law, since such a product has never been the subject of an ITC preliminary injury determination.

DOC Position. We have determined to leave the description of the scope of this investigation unchanged. Prior to defining the scope of this investigation, we considered information from the petition, the Bureau of Mines, and the Customs Service. This information clearly indicates a common commercial meaning for silicon metal as a product with a silicon content between 96.00 and 99.99 percent. However, we have seen evidence that certain parties are selling or offering for sale merchandise containing less than 96 percent silicon and calling that product "silicon metal." Given the significant disparity in apparent value between the below 96 percent and above 96 percent "silicon metal," we are unable to conclude, based on the information before us, that the less than 96 percent product is of the same class or kind as the above 96 percent product.

Comment 17. CCM argues that when it made a sale to the United States during a month in which no home market sales occurred, the Department should compare the U.S. sale with the most contemporaneous home market sale, adjusted for inflation, and not with CV, as was done in Certain Iron Construction Castings from Brazil; Final Results of Antidumping Duty Administrative Review, 55 FR 26238 (June 27, 1990).

DOC Position. Because we found that CCM's home market sales were made at prices below the COP, we have not used them for comparison to U.S. sales prices. Instead, we have used CV, as described in the "Foreign Market Value" section of this notice.

Comment 18. CCM asserts that the Department should convert cruzeiro-denominated movement expenses incurred on U.S. sales into U.S. dollars using the exchange rate in effect for the dates on which those expenses were incurred, instead of the date of sale.

DOC Position. We agree with CCM and have converted all cruzeiro-denominated movement charges to U.S. dollars on the dates on which they were incurred. See DOC Position to Comment 3.

Comment 19. CBCC contends that although Brazil's economy was hyperinflationary during the POI with regard to the cruzeiro, it is not hyperinflationary if the Department uses the Bonus do Tesouro Nacional (BTNF) monetary adjustment. CBCC argues that the Department should utilize the BTNF monetary adjustment and calculate one FMV for the POI to be used for comparison to U.S. sales.

DOC Position. As described in the "Foreign Market Value" section of this notice, we found that all sales in the home market were made at prices below the COP and, therefore, we based FMV on monthly CVs.

We calculate monthly FMVs in hyperinflationary economies to eliminate the distortive effect of the rapidly changing nominal value of the currency. By isolating costs and prices within a limited time period, we control the rapid changes in the nominal currency costs and prices.

For the reasons stated in the DOC Position to Comment 36, the use of the monetary correction does not reasonably reflect production costs in Brazil. Therefore, one FMV calculation for the POI using the monetary correction would not eliminate the distortive effect of rapid changes in the nominal value of currency on costs and prices.

Comment 20. CBCC argues that the Department should make a circumstance of sale adjustment for foreign currency fluctuations when the date of exportation and the date of sale are not in the same month, as it did in Disc Wheels.

Petitioners argue that no adjustment should be made for currency fluctuations between the date of sale and date of shipment.

DOC Position. In *Disc Wheels,* the Department calculated CV as of the date of shipment, in accordance with section 773(e)(1)(A) of the Act. When shipment occurred in a month other than the month in which the merchandise was sold, the Department adjusted the CV to account for inflation between the date of sale and the date of shipment. The Department did this because it is required to make all currency conversions as of the date of the U.S. sale, pursuant to 19 CFR 353.50 and 353.60.

In this case, we followed the methodology used in Disc Wheels. We calculated CV as of the date of shipment. When shipment occurred in a month following the month in which the merchandise was sold, we adjusted the CV back to the date of sale to account for inflation between the date of sale and date of shipment.

Comment 21. CBCC maintains that its reported home market prices contain a shall-quantity surcharge that the Department should deduct when calculating FMV.

Petitioners aruge that this surcharge should not be deducted from the home market price.

DOC Position. We agree with petitioners. We have used the verified home market prices in our analysis. For sales of small quantities in the home market, the Brazilian government allows CBCC to add a surcharge to the price. Since CBCC claimed that it had a price list, we were unable to verify the addition of the surcharge to the list price and, therefore, have no basis with which to make such an adjustment. In effect, CBCC is asking for a quantity discount and has not justified it. Therefore, we must use the actual prices at which the merchandise was sold.

Comment 22. CBCC contends that the Department erred in its critical circumstances calculation in the preliminary determination by omitting a July 1990 shipment to the United States. CBCC argues that the Department should correct this error and rescind its finding of critical circumstances. Moreover, if the Department finds that critical circumstances exist for the final determination, CBCC argues that it must direct Customs to suspend liquidation only on those shipments made after 90 days before the final determination.

Petitioners argue that the Department should extend the comparison periods to August through December 1990 and March through July 1990. As an alternative, petitioners recommend that the Department use the first quarter of 1990 as the relevant comparison period.

DOC Position. We disagree with CBCC. In our preliminary determination regarding critical circumstances, we utilized the exhibit submitted by CBCC in its response outlining its 1989 and 1990 monthly shipments. CBCC created this exhibit specifically in response to the Department's questions regarding critical circumstances. In this exhibit, CBCC listed the shipments for July as zero. The Department accepted the information submitted by CBCC with regard to critical circumstances for purposes of the preliminary determination.

Using CBCC's most recent submission, data collected at verification, and correcting CBCC's error in omitting its July shipment from its critical circumstances exhibit, we have continued to find the critical circumstances exist. See the 'Critical Circumstances" section of this notice.

Regarding the comparison period, we used the most current period prior to the prliminary determination for which company-specific shipment data was available.

Comment 23. CBCC contends that the Department erried in the preliminary determination by imputing packing expenses on several of its sales to the United States that were shipped in bulk and were not packed. CBCC argues that the Department should not include packing costs on merchandise shipped in bulk.

DOC Position. We disagree with CBCC with regard to the Department's treatment of packing expenses in the preliminary determination. The Department used BIA at the preliminary determination with regard to CBCC's reported packing expenses because of deficiencies in CBCC's response. We found at verification that CBCC had erroneously reported packing expenses for sales or portions of sales that we shipped in bulk. Furthermore, the packing expenses CBCC reported in its response to our questionnaire could not be verified.

For those sales which we found at verification to have been shipped in bulk, we have not added packing expenses. For those sales that were shipped packed, we have used CCM's reported packing expenses as BIA for CBCC's packing expenses.

Comment 24. Petitioners contend that the miscellaneous material costs CCM reported as historical costs should be adjusted to reflect replacement costs.

CCM contends that its miscellaneous material accounts are comprised of items which are not inventoried. Accordingly, CCM argues that these costs are stated at replacement cost and no adjustment is necessary.

DOC Position. We agree with petitioners. CCM did not provide any evidence at verification which indicated that all or part of the expenses were stated at replacement cost. Accordingly, we used the average difference between the historical cost and replacement cost for primary materials as BIA to adjust the reported miscellaneous material cost to replacement costs.

Comment 25. Petitioners state that in the months for which CCM did not have purchases of materials, the use of the prior month's cost adjusted by the applicable BTNF inflation factor understates the inflation. Petitioners argue that the Department should use the wholesale or consumer price index because it is a more accurate measure of inflation than the BTNF index. Petitioners further argue that the BTNF reflects the country wide index versus specific industry indexes such as the wholesale price or consumer price index.

CCM maintains the BTNF index is the appropriate inflation index. CCM also aruges that many Brazilian companies use BTNF to adjust prices for inflation.

DOC Position. We agree with CCM. There is insufficient evidence on the record demonstrating that any index other than the BTNF is a more appropriate measure of inflation for purposes of this investigation. Accordingly, we used the BTNF for our calculations.

Comment 26. Petitioners argue that the Department should disallow CCM's offset of short-term interest income against finance costs. Petitioners assert that the large amount of short-term income indicates a portion of the amount is interest income related to investments.

CCM contends that the short-term interest income was earned on interest bearing deposits of working capital. Accordingly, such income should be offset against CCM's finance expense. CCM contends that its year end financial statements demonstrate that the amount of short-term interest income was earned from its working capital assets.

DOC Position. We disagree with petitioners. The information on the record indicates that the short-term interest income was earned on working capital. Accordingly, we reduced interest expense by the amount of the short-term interest income.

Comment 27. Petitioners maintain that the Department should include ICMS, PIS, and FINSOCIAL taxes in constructed value (CV). Petitioner argues that CCM's admission that it pays more in taxes than it passes on, confirms that these costs should be included in CV.

Petitioners also argue that the Department should recalculate the amount of tax based on the tax CCM would have paid on its replacement costs rather than CCM's submitted amount based on historical costs.

CCM agrees with petitioners that ICMS taxes should be included in CV. However, CCM disagrees with petitioners' contention that it underreported the amount of ICMS taxes. CCM contends that its reported ICMS figure is the amount based on replacement costs. CCM also argues that petitioners incorrectly calculated ICMS because the CCM's methodology ignores the items which are internally produced, and ignores the rate for purchases from other states.

DOC Position. We agree with petitioners. Section 773(e)(1)(A) of the Act provides that in constructing the value of imported merchandise, the Department must include the cost of materials "exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used." The ICMS tax is paid on the material inputs of the exported product and is not remitted or refunded upon exportation. Therefore, we include ICMS taxes paid on inputs in the constructed value. We did not recalculate the amount of the tax based on replacement cost because CCM had correctly calculated the amount of tax.

Comment 28. Petitioners argue that the Department should compare CCM's COP to home market sales prices that are exclusive of ICMS tax.

Petitioners maintain that the ICMS received from a home market sale is not part of the sales proceeds realized by CCM. Petitioners also argue that tax-exclusive comparisons are consistent with the Department's prior policy and that if CCM did not pay tax on its inputs, the amount of the tax would have to be remitted to the government. Accordingly, the receipt of tax on home market sales is not revenue to CCM.

CCM contends that its ICMS tax paid on inputs exceeds the amount received in its home market sales. Therefore in aggregate, CCM pays more ICMS than it receives. CCM contends that the net ICMS tax paid represents a real cost of producing silicon metal. Accordingly, CCM contends that the amount of ICMS should be included in COP and also the home market sales price.

DOC Position. We agree with petitioners. The ICMS tax paid on inputs for home market is an indirect tax ultimately borne by the final consumer. Accordingly, the ICMS tax is not a cost incurred for producing products which are sold in the home market. Therefore, the Department compared the home market sales price (net of ICMS) to COP without ICMS.

Comment 29. Petitioners argue that the Department should disallow CCM's claimed deduction for dust collection. Petitioners maintain that the dust collector which collects silica fume is a cost to CCM which is greater than any benefit received from silica fume sales. Petitioners also argue that the fact that

CCM's cost system does not separately account for silica fume costs indicates that silica fume cannot be a co-product of silicon metal.

CCM contends that silica fume has many uses and states that it receives significant revenues from sales of silica fume. CCM also argues it is irrelevant where CCM currently has separate accounting records for silica fume.

DOC Position. We agree with petitioners. CCM officials indicated that the dust collector was required for pollution control purposes in the Amazon area. Accordingly, the equipment was required in the production of silicon metal. The Department did not allow CCM's exclusion of dust collection expenses. In addition, there is no information on the record regarding sales revenues for silica fume and, therefore, we did not reduce the dust collection costs for offseting income.

Comment 30. Petitioners argue that the Department should increase CCM's G&A expenses by the parent company expenses. Petitioners maintain that these expenses relate to CCM and, accordingly, should be included in the submitted costs.

CCM contends that it is not consolidated into the financial statements of its parent company. CCM argues that this fact demonstrates it operates independently of its parent companies. Accordingly, parent company G&A expenses should not be attributable to its reported costs. CCM also argues that the parent company's expenses are merely shareholder expenses which are not attributable to CCM's production costs.

DOC Position. We agree with petitioners. While CCM does not account for these costs in its accounting system, these costs were incurred on CCM's behalf. According, we included CCM's estimated parent company expenses in G&A as BIA.

Comment 31. Petitioners argue that the Department should not use CCM's normalized costs. Petitioners contend that a year and a half of production is too long to be considered a start-up operation. Furthermore, petitioners state that other factors such as new management or changes in the number of furnaces being operated may have caused the increased efficiency realized by CCM. Petitioners also argue that these cost are not unusual or extraordinary expenses and therefore not start-up costs which should be excluded from the submitted costs.

CCM argues that its efficiency levels during the POI demonstrate that they were not at normal production levels. CCM attributes this to its new entry into silicon production. As such, the Department should normalize CCM's costs as they have done in other cases. CCM contends that the Department verified the improved efficiency levels which demonstrate CCM's normal consumption levels. CCM also contends that the number of furnaces does not affect operating efficiency. CCM also argues that two years is not an unreasonable period of time to consider start-up costs given the complexity of the product. CCM states that new management is not grounds for rejecting the adjustment.

DOC Position. We agree with petitioners. CCM did not submit any evidence that start-up operations in this industry would last as long as two years. We note that the increase in efficiencies occurred after a change in management and that a demonstrated change in efficiency is not necessarily indicative of start-up activity. Accordingly, we disallowed CCM's claim for start-up costs.

Comment 32. Petitioners argue that CCM did not calculate actual profit earned on home market sales because it substituted the CV statutory minimum ten percent SG&A for its actual SG&A expenses.

CCM argues that it is unfair to calculate profit in the home market with less than ten percent SG&A. CCM argues that using actual SG&A to calculate profit creates dumping margins unfairly.

DOC Position. We agree with petitioners. The ten percent SG&A amount is a minimum percentage for use in CV. The minimum percentage does not apply to the calculation of actual profit on home market sales. We used the statutory minimum profit for CV since it exceeded the actual profit.

Comment 33. Petitioners argue that the Department should reject CCM's calculations of inventory holding gain because of the numerous errors in its submission. Petitioners further argue that the revised calculations incorrectly value the layers of inventory. Petitioners assert that CCM should have assigned actual production costs for each month's inventory.

CCM contends that it revised the errors in its calculations and complied with the Department's requests in a good faith effort.

DOC Position. We agree with petitioners that CCM's calculated inventory holding gain did not correctly value the layers of inventory. The inventory holding gain or loss reflects the difference between the current replacement cost and the inflation adjusted cost of inventory. We calculated incremental inventory holding gains and losses for the months where sufficient data was available using actual production costs and determined the average holding gain or loss for the POI. In this case, the average holding gain or loss was applied to each month's cost of manufacturing.

Comment 34. CCM argues that the Department should reduce its labor and electricity costs by the amounts which are included in the invoice price to account for the difference between the date a bill is mailed and the date payment of the bill is received. CCM contends the adjustment is necessary in order to account for the effect of inflation on the cost between the dates on which CCM was first billed for and later paid these costs.

Petitioners maintain that CCM was required to use actual replacement cost and, therefore, the Department should ignore CCM's BTNF variation calculations.

DOC Position. We agree with CCM. CCM has indicated that the invoice price is increased by an amount of expected inflation to account for the delayed payment. CCM then has the benefit of earning income on the cash for the period of the delay in payment. The cost of production is reduced by the amount of this short-term income. CCM's contention that the Department should further reduce COP by the amount of the delay in payment would constitute double counting of the benefit from the delay in payment. Accordingly, we did not reduce CCM's costs for this adjustment.

Comment 35. CCM contends that applying the ratio of G&A expense to cost of goods sold from the financial statements to replacement costs is inconsistent. CCM contends the G&A and replacement costs are current expenses while the costs of good sold is an historical expense.

DOC Position. G&A expenses are period costs which should be based on the annual period in which they were incurred. Accordingly, we calculated G&A expenses based on the ratio of annual G&A expenses over annual cost of goods sold. The percentage of G&A expenses to cost of sales reflects the relationship of such expenses over a period of time when nominal values were changing for all inputs. Therefore, this percentage, when applied to replacement costs which reflect the nominal value of such costs for a month, would properly reflect the nominal value of G&A expenses for that month.

Comment 36. CBCC argues that the Department's request for replacement cost is inappropriate as it is not in accordance with Brazilian generally

accepted accounting principles (GAAP). CBCC argues that the law requires the Department to use the GAAP of the exporting country if it properly reflects and captures all fixed and variable costs. CBCC contends that the Brazilian GAAP is designed to identify and fully absorb the effects of inflation through monetary correction. CBCC asserts that replacement costs are hypothetical costs versus actual costs incurred by the company.

Petitioners argue that CBCC's reported material costs are not replacement costs. Petitioners state that in a hyperinflationary economy like Brazil's, material costs should be valued using replacement costs because historical costs are not an accurate measure of the actual economic cost of merchandise being sold. Specifically the significant difference between replacement cost and CBCC's historical cost adjusted for monetary correction is evidence that the historical cost is not fully adjusted for inflation. Petitioners further argue that the Department is not required to use the GAAP of the exporting country if it does not result in costs being appropriately valued. Petitioners contend that the Department should revise CBCC's response to reflect replacement cost or use BIA.

DOC Position. We agree with petitioners. Replacement costs are the current costs actually incurred by CBCC. The use of replacement costs eliminates the effects of hyperinflation on historical costs. Brazilian GAAP adjusts for inflation by use of the monetary correction. However, the monetary correction is an aggregate inflation adjustment to restate owner's equity and permanent assets. The monetary correction does not specifically relate to the product, nor to the POI, and thus, it would be distortive to apply this adjustment to the product. Because the Department determined that Brazilian GAAP does not reasonably reflect the costs of producing silicon metal in Brazil, the Department followed its long-standing practice to use replacement costs in hyperinflationary economies. *Ipsco, Inc., and Ipsco Steeel, Inc.* v. *United States*, 687 F. Supp. 633 (CIT 1988); see *e.g.*, Disk Wheels from Brazil and FCOJ from Brazil.

Comment 37. Petitioners argue that CBCC did not report replacement costs for secondary materials. Petitioners argue that these costs should be revised for the final determination.

DOC Position. We agree with petitioners. We used the percentage increase between primary material costs based on historical value and replacement value to value secondary materials on a replacement cost basis.

Comment 38. Petitioners contend that CBCC underreported its electricity costs. Petitioners asset that the rates contained in public information and CBCC's invoices reflect higher rates than that reported in the submission.

CBCC maintains that the Department verified electricity costs and found no discrepancies. CBCC states that the amounts reported on the invoices reconcile to the amounts reported in the submission.

DOC Position. We agree with CBCC. At verification, CBCC reconciled its electricity invoices to its submission.

Comment 39. Petitioners argue that the Department should not adjust CBCC's submission for payment terms to reflect "at sight" costs. Petitioners contend that CBCC did not submit any data which demonstrates the accuracy of the "at sight" price. Petitioners argue that the CBCC's own accounting system does not adjust for payment terms, and therefore, the adjustments are purely speculative. Petitioners also contend that adjusting for payment terms would be double counting the benefit received from delayed payment terms because the Department already reduces COP by short term interest income.

CBCC contends that the concept of replacement cost cannot include terms of payment. CBCC argues that on many inputs, the cruzeiro invoices are inflated to adjust for inflation between the time of delivery and the time of payment. CBCC contends that by using the invoice prices, the Department would be inconsistently using cost in the unit of currency applicable for the following month. CBCC also contends that its adjustment (for payment terms) has nothing to do with financing or interest.

DOC Position. We disagree with CBCC. CBCC has indicated that the invoice price is increased by an amount of expected inflation to account for the delayed payment. CBCC then has the benefit of earning income on the cash for the period of the delay in payment. The COP is reduced by the amount of this short-term income. CBCC's contention that the Department should further reduce COP by the amount of the delay in payment would constitute double counting of the benefits from the delay in payment. Accordingly, we did not reduce CBCC's costs for this adjustment.

Comment 40. Petitioners argue that ICMS, PIS, and FINSOCIAL taxes paid on production inputs should be included in the calculation of CBCC's CV. Petitioners contend that CBCC must pay the above taxes on inputs used to produce silicon metal when it is exported. Petitioners argue that CBCC is not exempt or reimbursed for such taxes and that no tax is collected by CBCC upon the export sale. Accordingly, petitioners assert that these taxes represent a net cost to CBCC for export sales and, therefore, should be included in CV. Petitioner argues that although it may be possible to offset these taxes against domestic sales of silicon metal or other products, CBCC's records indicate that the ICMS tax paid on inputs is greater than the amount received from its home market sales.

CBCC argues that it has demonstrated that it is exempt from ICMS, PIS, and FINSOCIAL taxes for its sales.

DOC Position. We agree with petitioners. Section 773(e)(1)(A) of the Act provides that in constructing the value of imported merchandise, the Department must include the cost of materials "exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used." The ICMS tax is paid on the material inputs of the exporter product and is not remitted or refunded upon exportation. Therefore, we included ICMS taxes paid on inputs in the constructed value. We did not recalculate the amount of the tax based on replacement cost because CBCC had correctly calculated the amount of tax.

Comment 41. Petitioners contend that CBCC improperly calculated G&A expenses by using monthly costs rather than annual costs. Petitioners argue that CBCC excluded costs incurred by its parent companies on behalf of CBCC. Petitioners maintain that CBCC's estimate of these costs understates the amount of expense and, therefore, the Department should use BIA. Petitioners assert that CBCC's brief indicates that CBCC's parent provided more consulting services than estimated by CBCC. Petitioners argue that it is appropriate to calculate G&A expenses based on historical costs and apply the ratio to replacement costs. Petitioners contend that it is appropriate to calculate the inflated G&A expense to coincide with the replacement costs.

CBCC contends that it properly reported G&A expenses. CBCC states that its corporate parent company is not involved in the product of silicon metal. Therefore, the Department should not include any costs incurred by Solvay in the calculated COP/CV. CBCC contends that the cost of the internal audits provided by Solvay are nominal. CBCC also contends that the consulting services related to the loan are normal consultations between the shareholders and the company.

CBCC also argues that it is inappropriate for the Department to calculate G&A expenses based on historical costs and then apply that ratio to replacement costs. CBCC argues that the G&A is not subject to the same inflationary problems as the cost of manufacturing calculated using replacement costs.

DOC Position. We agree with petitioners. G&A expenses are period costs which should be based on the annual period in which they were incurred. Accordingly, we calculated G&A expenses based on the ratio of annual G&A expenses over annual cost of goods sold. The G&A submitted in the financial statements is the G&A which relates to the cost of sales reported in the financial statements.

Comment 42. Petitioners argue that the Department should adjust CBCC's submitted finance costs because CBCC improperly calculated finance costs based on quantity of goods produced versus cost of goods sold. Petitioners also contend that the Department should include the interest expense incurred on the loan for furnaces nine and ten from the Solvay parent company. Petitioners maintain that money is fungible and the expense related to the loan is a cost shared by all operations. Furthermore, petitioners contend that the loan for the two furnaces relates to the expansion of CBCC's silicon metal production capacity. Petitioners assert that these new furnaces are capable of producing silicon metal and, therefore, these finance costs relate to silicon metal based on the potential of future production.

Petitioners also contend that CBCC improperly reduced its finance costs by the amount of monetary correction. Petitioners state that monetary correction is designed to adjust permanent assets for the effects of inflation. Accordingly, it is not a factor that relates to finance expenses. Petitioners also argue that it is not clear whether the monetary correction is for silicon metal or the other products produced by CBCC.

CBCC contends that financial costs associated with the production of a product not subject to investigation can not be attributed to a product under investigation. CBCC states that the finance expenses relate solely to calcium carbonate because the furnaces in question did not produce silicon metal during the POI, and accordingly their costs should not be included in the cost of silicon metal.

DOC Position. We agree with petitioners. The amount of finance costs were recalcuated based on the total annual finance expense incurred by CBCC allocated over annual cost of sales. The interest expense on the loan from Solvay related to the company as a whole because money is fungible. Furthermore, the new furnaces can, in fact, be used to produce silicon metal. These new furnaces could also free up the productive assets of CBCC to produce more silicon metal. For the reasons stated in DOC Position to Comment 36, we did not apply the monetary correction to finance costs because it does not relate to finance costs.

Comment 43. Petitioners contend that CBCC's methodology for calculating inventory holding gain or loss is flawed as it assumes that inventory is only held for one month. Petitioners contend that the inventory must be layered by the month it was placed into inventory and then the holding costs should be recalculated.

DOC Position. We agree with petitioners that CBCC's calculated inventory holding gain did not correctly value the layers of inventory. The inventory holding gain or loss reflects the difference between the current replacement cost and the inflation adjusted cost of inventory. We calculated incremental inventory holding gains and losses for the months where sufficient data was available using actual production costs and determined the average holding gain or loss for the POI. In this case, the average holding gain or loss was applied to each month's cost of manufacturing.

Continuation of Suspension of Liquidation. In accordance with section 735(d)(1) of the Act, for CCM and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to continue to suspend liquidation of all entries of silicon metal from Brazil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after March 29, 1991, which is the date of the publication of our preliminary determination in the **Federal Register.**

In accordance with section 735(c)(4)(B) of the Act, we are directing the Customs service to suspend liquidation of entries of silicon metal exported from Brazil by CBCC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after December 29, 1990, which is the date 90 days prior to the publication of the preliminary determination in the **Federal Register.**

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage	Critical circumstances
Companhia Brasileira Carbureto de Calcio (CBCC).	87.79	Yes.
Camargo Correa Metais, S.A. (CCM).	93.20	No.
All Others	91.06	No.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will all the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination whether these import materially injure, or threaten material injury, to a U.S. industry within 45 days of publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on silicon metal entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: June 5, 1991.

Eric T. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13979 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-807]

Final Negative Countervailing Duty Determination: Silicon Metal From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute countervailable subsidies are being provided to manufacturers, producers, or exporters in Brazil of silicon metal.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Sullivan or Stephanie Hager, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0114 or (202) 377–5055, respectively.

SUPPLEMENTARY INFORMATION:

Case History

Since our preliminary determination (Preliminary Negative Countervailing Duty Determination: Silicon Metal from Brazil, 55 FR 49322 (November 27, 1990)), the following events have occurred.

We conducted verification in Brazil of the questionnaire responses of the Government of Brazil (GOB); Camargo Correia Metais (CCM); Cia Industrial Fluminense (CIF); and, Companhia Brasileira Carbureto de Calcio (CBCC), Companhia Ferroligas Minas Gerais (Minas Ligas), Electroila S.A., Ligas de Aluminio S.A. (LIASA), and RIMA Electrometalurgia S.A. (RIMA) (hereafter referred to as "CBCC et al.") from December 1 to December 16, 1990.

On January 8, 1991, we extended the deadline for the final determination in this case to correspond to the date of the final antidumping duty determination on the same product (see Alignment of the Final Countervailing Duty Determination With the Final Antidumping Duty Determination; Silicon Metal from Brazil, 56 FR 680 (January 8, 1991)). At that time we announced that no hearing would be held in this case because no interested parties requested one within ten days of our preliminary determination. Petitioners and respondents filed case briefs on March 25 and rebuttal briefs on April 1, 1991.

CCM filed submissions on January 23 and March 13, 1991, requesting that the Department narrow the scope of the investigation. On January 28, 1991, petitioners filed a submission requesting the Department to expand the scope to include all imports of silicon metal, other than semiconductor grade silicon metal.

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 percent but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Standing

In its letter dated January 23, 1991, and its case brief of March 25, 1991, CCM challenged petitioners' standing to file on behalf of the domestic producers of the like product.

CCM maintains that petitioners do not regularly produce or sell silicon metal with a silicon content of 97.49 percent and below. Therefore, CCM argues that silicon metal having a silicon content of less than 97.50 percent should be excluded from this investigation because petitioners lack standing with respect to such merchandise.

The ITC has preliminarily determined that there is one like product, which includes all of the merchandise defined by the scope of this investigation. Silicon metal with a silicon content between 96 and 97.50 percent is within the same class or kind defined by the scope of this investigation. An interested party is not required to produce every product within the class or kind of merchandise included in the scope of the investigation in order to have standing. CCM does not challenge that petitioners produce silicon metal in the higher range. Accordingly, given that petitioners, as producers of the subject merchandise, are interested parties filing on behalf of the domestic industry, we have determined that petitioners have standing.

Hyperinflationary Economies

In analyzing the date relating to the benefits received by silicon metal producers in Brazil, it was apparent that the benefits from the CACEX, SUDENE and Income Tax Reduction for Export Earnings programs were clustered in one part of the review period. In a hyperinflationary economy, such as Brazil's was during the review period, this clustering can distort the measurement of benefits received by the firms. Specifically, the value of a benefit received earlier in the year would tend to be understated while the value of a benefit received later in the year would tend to be overstated. By way of contrast, if benefits and sales were distributed evenly throughout the year, the distortion would be minimal. In this case, since the benefit from each program is clustered in the early part of the year, and sales are not clustered, a methodology which corrects for this distortion is needed.

To accomplish this, we used the OTN/BTN (Obrigacoes do Tesouro Nacional/Bonus do Tesouro Nacional) index to counteract the effects of hyperinflation and more accurately meaure the value of the benefit. The OTN/BTN index is a national treasury bond index that is widely used in the Brazilian economy for various accounting and financial purposes to convert nominal values into constant values. The OTN index was the official index until January 16, 1989, at which time it was replaced by the BTN index. On this date, the currency changed from the cruzando to the new cruzado. For purposes of this notice, we will refer to the official index as the OTN/BTN index even though only one was the official index at any particular time. As described in greater detail below, we used the OTN/BTN index to compute benefits and sales values in constant new cruzado amounts and, in turn, used these constant new cruzado amounts to culculate the *ad valorem* benefits.

Analysis of Programs

For purposes of this investigation, the period for which we are measuring subsidies ("the review period") is calendar year 1989, which corresponds to the most recently completed fiscal year for all of the respondent companies.

Based upon our analysis of the petition, responses to our questionnaires, verification, and written comments from respondents and petititoners, we determine the following:

I. Programs Determined to be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of silicon metal under the following programs:

A. Income Tax Reduction for Export Earnings

(This program was referred to in our preliminary determination as Income Tax Exemption for Export Earnings.)

Under this program, profits from export sales are taxed at a rate of three percent while profits from domestic sales are taxed at a rate of 30 percent. Because this program provides a lower income tax rate for export earnings, we determine that it is countervailable.

We calculated the benefit for each company by subtracting the tax actually paid for the tax that would have been paid by that firm absent the lower tax rate for export profits. In order to calculate the tax that would have been paid, we took profit attributable to exports, indicated on the tax forms and donominated in OTN/BTN, and applied the effective tax rate for each company. We then deducted from that figure the actual amount of tax paid on export profits, which is also indicated on the tax form and denominated in OTN/BTN.

For the denominator, we used total exports (See Comment 4) converted into OTN/BTN using the average OTN/BTN rate for 1989. We divided the tax savings by total exports to determine each company's *ad valorem* rate. We then weight-averaged the individual benefit, by each company's share of total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.17 percent *ad valorem* for all manufacturers, producers, and exporters of silicon metal in Brazil.

At the preliminary determination, we assigned CCM a rate based on the best information available for this program. We have since verified that CCM's taxable profit was attributable to financial operations and sales of non-subject merchandise, and, hence, it did not benefit from this program.

We also verified that, on December 28, 1989, by Law No. 7988, the tax rate on income attributable to export sales increased to 18 percent for the 1990 tax year. On April 12, 1990, by Law No. 8034, the tax rate on income attributable to export sales increased to 30 percent for the 1991 tax year. As a result of the most recent change, all income is taxed at the same rate.

B. CACEX Loans

On May 2, 1985, Resolution 1009 made CACEX working capital financing available to exporters through commercial banks at prevailing market rates. The loans have a term of one year or less, with interest due at maturity. While borrowers were to pay market interest rates, the Central Bank of Brazil was authorized to pay the lending institution an "equalization fee," or rabate, of up to 15 percentage points, which the lending institution could pass on to the borrowers. On December 1, 1988, by Resolution 1538, CACEX reduced the equalization fee to 7.5 percentage points. The equalization fee is passed on to borrowers at the time interest is paid on the loan.

In addition, CACEX short-term loans are exempt from the "Imposto Sobre Operacoes Financeiras" (IOF). The IOF is a general tax of 0.0041 percent per day (or 1.5 percent per annum) of the sum total of daily debt balances, imposed on the principal of all financial transactions in Brazil. The tax is calculated on the final day of each month and paid on the tenth day of the following month.

Because the equalization fee and the exemption from the IOF results in the provision of preferential export financing at perferential rates only to exporters, we determine that these loans are countervailable. The benefit from these loans is equal to the equalization fee plus the amount of the IOF exemption.

To calculate the level of subsidies received during the review period from the equalization fee, we multiplied the loan principal, adjusted for monetary correction, by the equalization fee rate to yield an amount denominated in cruzados. We multiplied that amount by the term of the loan divided by 365 days, as the equalization fee applies annually. The resultant cruzado benefit was divided by 1000 (to convert into new cruzados) and then converted into OTN/BTN at the rate in effect on the day the equalization fee was received.

We calculated the benefit from the IOF exemption by applying the tax rate of 0.0041 percent per day to the principal amount of the loan for the number of days of the month the loan was outstanding. The resultant cruzado exemption was devided by 1000 (to convert into new cruzados) and then converted into OTN/BTN using the rate in effect on the tenth day of the following month; this is the day that the IOF is normally paid.

For the denominator, we converted each firm's total export figure into OTN/BTN by dividing total exports by the average OTN/BTN rate for 1989. We then summed the total OTN/BTN benefit from the equalization fee and the IOF exemption for each firm and divided the benefit by each firm's OTN/BTN denominated total exports. We weight-averaged the individual benefits by each company's share of total exports of the subject merchandise to the United States. On this basis, we determine the benefit from this program to be 0.24 percent *ad valorem* for all manufacturers, producers, and exporters of silicon metal in Brazil.

We verified that, on August 30, 1990, Resolution 1744 revoked Resolution 950, thereby terminating this program.

C. SUDENE

This program was not included in the Department's preliminary determination because it was discovered during verification. Under this program, companies which locate in the Northeast of Brazil are eligible for exemption from income tax for production attributable to SUDENE-approved projects. The intent of this program is to encourage development of this region of Brazil. Because this exemption is only available to companies located in a specific region of Brazil, we find this to be a countervailable domestic subsidy.

The amount of tax exempted due to this program can be found on a company's tax returns denominated in OTN/BTN. The benefit is equal to the amount of the exemption.

Because this is a domestic subsidy, the appropriate denominator is total sales. In order to convert the verified new cruzado total sales figure into OTN/BTN, we divided total sales by the average OTN/BTN rate for 1989.

We divided the benefit received by each company by total sales of each company to calculate each company's *ad valorem* subsidy. We then weight-averaged the individual benefits by each company's share of total exports of the subject merchandise to the United States. On this basis, we determine the benefit from this program to be 0.08 percent *ad valorem* for all manufacturers, producers, and exporters of silicon metal in Brazil.

II. Programs Determined to be Not Used

We determine that the following programs were not used by manufacturers, producers or exporters of silicon metal in Brazil during the review period. For a full description of these programs, see our preliminary determination.

A. Benefits Provided by the Commission for Granting of Fiscal Benefits to Special Export Programs (BEFIEX). We verified that this program was terminated by Decree Law 8032 dated April 12, 1990.

B. Export Financing Provided by the Fundo de Financiamento a Exportacao (FINEX). We verified that this program was not reinstated within two years of the passage of the new Brazilian Constitution, as was required by law.

C. Financing for the Storage of Merchandise Destined for Export (Resolution 330 of the Central Bank of Brazil). We verified that this program was terminated by Resolution 1744, dated August 30, 1990.

D. Export Promotion Financing Provided Under the Programa de Financiamento a Producao para a Exportacao (PROEX). We verified that the Department administering this program was abolished and found no evidence that the program currently exists.

III. Program Determined Not to Exist

We determined that the following program does not exist.

A. Provision of Electricity at Preferential Rates to Silicon Metal Producers Located in Minas Gerais. Petitioners allege that the GOB provides electricity at preferential prices to manufacturers, producers and exporters of silicon metal in Brazil. According to information gathered at verification, the silicon metal producers under investigation paid normal published rates for all electricity consumed and we found no evidence of the existence of any schedule of preferential electricity rates.

Final Determination

The total *ad valorem* benefits received by Brazilian manufacturers, producers and exporters of silicon metal equal 0.49 percent. This amount is *de minimis*, and pursuant to 19 CFR 355.7, we determine that exports of silicon metal from Brazil are not receiving benefits which constitute countervailable subsidies.

Interested Party Comments

Comment 1

Petitioners argue that the denominators used to calculate *ad valorem* benefits (*e.g.*, 1989 total exports, 1989 total sales) should be adjusted to account for inflation in Brazil. Petitioners believe that, in an inflationary economy like Brazil's, it is inappropriate to compare the benefit received in April from income tax programs to the value of a firm's exports at year-end because such a comparison results in an understatement of the benefit. Petitioners suggest that the Department either (1) convert the tax benefit into dollars if exports are already denominated in dollars and divide the benefit by total exports, (2) determine the value of respondents' exports in OTN/BTN and divide the tax benefit expressed in those same terms by exports, or (3) divide the tax benefit, converted into Brazilian currency on April 15, by the value of exports adjusted for inflation to arrive at an April 15 export value. Any of these methods, petitioners argue, would serve to negate the effects of inflation.

Petitioners maintain that a similar method should be employed in order to calculate a proper denominator for the CACEX benefits. The year-end denominator value would be adjusted for the average inflation rate for the year. Petitioners contend that these adjustments are consistent with Departmental practices in hyperinflationary economies. See Final Affirmative Countervailing Duty Determination; Steel Wheels from Brazil, 54 FR 15523, 15226 (April 18, 1989).

CBCC et al. argue that the Department did, in fact, index the tax benefits using OTN/BTN. When the liability is computed, it is converted to OTN/BTN. It is then converted into Brazilian currency at the rate effective at the time the return is filed. Since the benefit is received in Brazilian currency at the time of filing, inflation acts upon the benefit and reduces it. The Department's methodology results in a lower benefit due to inflation but, CBCC et al. argue, this reflects actual expenses. CBCC et al. suggest that petitioners' method, if carried to the extreme, would necessitate calculating a subsidy rate for each day during the review period and weight-averaging the results.

DOC Position

Under the circumstances present in this case, we agree with petitioner that the method of calculating subsidy rates needs to account for hyperinflation. We disagree with CBCC et al. that converting the OTN/BTN tax liability into new cruzados on the day of filing fully accounts for hyperinflation. See the Hyperinflationary Economies and Analysis of Programs sections of this notice for further discussion of the methodologies employed.

Comment 2

CBCC et al. argue that the Department should not countervail benefits under the SUDENE program. They state that these benefits are available to a wide range of industries and for a large area of Brazil, as well as being consistent with the GATT and the Subsidies Code. They assert that Article XVI of the GATT and Articles 11 and 14 of the Subsidies Code permit signatories to implement programs in order to encourage regional development. Citing Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon From Norway, 56 FR 7678, 7679 (February 25, 1991) (Salmon), CBCC et al. argue that the Department's past practice of countervailing regional development programs is in error. They contend that the Department is wrong to recognize the aims of regional development programs and, nevertheless, countervail these programs. CBCC et al. contend that any reduction in tax liability resulting from participation in the program must be reinvested in the company (*i.e.*, the funds are conditionally available) and, therefore, does not constitute a countervailable benefit.

Petitioners allege that the Department should find these benefits under the SUDENE program to be countervailable. Petitioners cite Salmon to support their contention that the SUDENE program is countervailable because benefits are given to companies located in a certain region of Brazil. Petitioners reject respondents' argument that the program should not be considered a countervailable subsidy because it covers a wide area of Brazil, contending that the Department has countervailed regional programs that covered large areas of a country (see Salmon). Petitioners again rely upon Salmon to argue that the Department has consistently rejected respondents' assertion that SUDENE is consistent with the GATT and the Subsidies Code. Petitioners finally assert that respondents' claim that because this benefit is conditioned upon it being reinvested in the company it is not countervailable, is groundless. Petitioners contend that the company can invest the benefit and will reap the rewards from such investment.

DOC Position

The Department agrees with petitioners. In Salmon, the Department addressed and rejected similar arguments regarding regional subsidies. The Department's determination that the SUDENE program is countervailable because it provides benefits only to companies located in specific regions is entirely consistent with U.S. obligations under the GATT and the Subsidies Code. Part I of the Code relates to signatories' obligations with respect to the conduct of countervailing duty investigations and the imposition of countervailing measures. None of the conditions attached to the imposition of countervailing measures in part I requires signatories to take account of the objectives noted in article 11 or to otherwise accord domestic subsidies any special treatment. Therefore, we determine that since these tax exemptions are granted on the basis of region, benefits received under the

SUDENE program constitute countervailable domestic subsidies.

Comment 3

Petitioners contend that respondents' failure to provide tax returns to the Department before verification prevented the Department from identifying benefits under the SUDENE program and incorporating them into the preliminary determination. Petitioners argue that the Department should further investigate the SUDENE program to determine whether other benefits exist. They allege that the GOB's submissions for this program are incomplete, this program may be tied to exports, and evidence exists that other tax benefits may be received by participatory companies.

CBCC et al. argue that the Department had information on the SUDENE program from previous cases and did not ask for information on the program in this case. In addition, they assert that petitioners had access to information on this program at the time the petition was filed. Furthermore, CBCC et al. argued that although petitioner refers to the respondent's failure to provide tax returns to the Department before verification, Commerce has consistently taken the position that tax returns are more appropriate as verification exhibits, citing Final Affirmative Countervailing Duty Determination: Certain Textile Mill Products and Apparel from Malaysia 50 FR 9852, 9857 (March 12, 1985). CBCC et al. also argued that, as exhibited during verification, no export commitment is required for this program.

DOC Position

We reject petitioners' request that we further investigate this program in this proceeding. Upon discovering this program during verification, we requested and received information adequate to measure the benefits received.

Comment 4

Petitioners argue that the Department erroneously used total exports as the denominator to calculate the benefit from the Income Tax Reduction for Export Earnings program. Petitioners contend that since certain exports (*i.e.*, "eligible exports") qualify for the lower tax rates while other exports do not, the *ad valorem* benefit from this program should be calculated using eligible exports in the denominator unless the Department has verified that all exports in the review period qualified as eligible exports. Petitioners cite Final Affirmative Countervailing Duty Determination; Iron Ore Pellets from Brazil, 51 FR 21961, 21967 (June 17, 1986) ("Iron Ore Pellets") where the Department used only exports eligible for this benefit in the denominator. Petitioners requested before verification that the Department verify data concerning eligible exports.

CBCC et al. assert that this program is based on the allocation of profit between total sales and export sales. According to CBCC et al., Iron Ore Pellets does not refer to the same program as the income tax program in this investigation. Because iron ore pellets constitute a mining product, CBCC et al. argue that iron ore pellets were subject to tax rules different from those for silicon metal. Further, the methodology used by the Department in its preliminary determination, in which it used export sales in the denominator, is consistent with past cases.

DOC Position

We agree with CBCC et al. that the tax program discussed in Iron Ore Pellets was a different program involving different conditions for the receipt of benefits. In that case, some products were eligible for benefits while other products were not. Here, all products can potentially benefit from the export tax program. Therefore, the appropriate denominator for calculating the *ad valorem* subsidy rate is total exports.

Comment 5

Petitioners contend that the Department should not adjust for contributions of taxes due to the FINOR/FINAME funds in calculating the effective tax rates. In the preliminary determination, these adjustments had no effect on the calculation of the benefit. However, if the amount of the tax saving is greater than zero but less than the amount of contribution to the special funds, then this adjustment reduces the benefit when, in fact, the benefit is not reduced. According to petitioners, these contributions are merely tax payments made to a recipient other than the GOB and they should not be accorded special treatment results in the Department's calculations when such treatment results in an inappropriate understatement of the benefit.

CBCC et al. contest petitioners' claims. They state that the Department's methodology in its preliminary determination, in which an adjustment was made for contributions to the FINOR/FINAME funds, is correct and consistent with previous determinations. See, *e.g.*, Certain Cotton Yarn Products from Brazil; Final Results of Countervailing Duty Administrative Review, 55 FR 28269 (July 10, 1990). The Department is now able to calculate the tax savings by deriving the effective tax rate directly from the company tax returns. CBCC et al. assert that Brazilian taxpayers receive value for their contributions to these funds. Therefore, CBCC et al. contend, the Department should continue to reduce the effective tax rate to reflect contributions to these funds.

DOC Position

We agree with CBCC et al. Payments into those funds reduce the taxes owed and, hence, lead to a lower effective tax rate. Therefore, we reduced the gross tax liability by the amount of the contributions to these funds in order to calculate each firm's effective tax rate.

Comment 6

Petitioners allege that the Department used an inappropriate OTN/BTN adjustment at the preliminary determination for the Income Tax Reduction for Export Earnings program. This adjustment, submitted by respondents, is not fully explained and understates the benefits received under this program. Petitioners contend that the Department must increase the Brazilian currrency value of the benefit to reflect the increased value of the tax from when it was owed (December) to when it was paid (April). Petitioners contend that the proper conversion factor, which also accounts for the change in currency from cruzado to new cruzado, should be 0.002447.

CBCC et al. argue that the Department's methodology in the preliminary determination is consistent with that used in previous cases involving Brazil. The Department considers when benefits are actually received (*i.e.*, when the tax return is filed). CBCC et al. agree with petitioners that the Department has indexed the benefit in previous investigations, but only because the value, in Brazilian currency, cannot be determined until the tax return is filed, not because the value of the benefit is eroded.

DOC Position

As explained in the Analysis of Programs section of this notice, we have taken the tax benefits expressed in OTN/BTN as the numerator for these calculations. Therefore, there is no need to convert them into new cruzados as requested by the petitioners.

Comment 7

Petitioners argue that the Department's verification indicated that the ratio of LIASA's exports to its total

sales was erroneously reported by LIASA and the GOB. Accordingly to the petitioners, this error affects the calculation of LIASA's benefits under the Income Tax Exemption for Export Earnings program. Petitioners argue that the Department should recalculate the amount of LIASA's benefit under this program, using the verified percentage of LIASA's sales attributable to exports.

DOC Position

The Department verified actual amount of tax savings due to the SUDENE and/or the Income Tax Reduction for Export Earnings program. LIASA's actual exports to sales ratio is implicit in the calculations required on the tax returns which determine the amount of tax savings. Therefore, the verified figures have been used.

Comment 8

According to petitioners, the Department's verification revealed that CBCC's reported amount of 1988 taxable profit was understated. Petitioners argue that because the amount of taxable profit subject to the preferential tax rate on export earnings is determined by applying the ratio of export sales to total sales to total taxable profit, the understatement of taxable profit led to an understatement of the amount of benefit enjoyed by CBCC in the Department's preliminary determination. Therefore, according to petitioners, the Department should recalculate the amount of benefit received by CBCC under the Income Tax Exemption for Export Earnings Program using CBCC's verified 1988 taxable profit.

DOC Position

As noted above in Comments 6 and 7, the Department is using actual amounts of exempt taxes reported on the companies' tax returns. Therefore, CBCC's correct taxable profit has been accounted for in our calculations.

Comment 9

CBCC et al. argue that the Department verified that the Income tax Exemption for Export Earnings has been eliminated and that there are no current countervailable benefits provided to the respondents under this program. According to CBCC et al., this constitutes a program-wide change prior to the Department's preliminary determination. Therefore, this program should not be included in any final determination regarding the product under investigation.

Citing Final Affirmative Countervailing Duty Determination; Certain Forged Steel Crankshafts from Brazil, 52 FR 38254 (October 15, 1987), petitioners concede that in certain circumstances, when setting deposit rates, the Department has taken account of program-wide changes in subsidy programs that are verified and occurred prior to the preliminary determination. According to petitioners, however, in the circumstances of this case, the Department should not take into account the program-wide change. Petitioners argue that respondents have not shown that the distinction between export and domestic earnings has been eliminated from Brazilian tax law, but only for tax year 1990 (1991 returns). Citing Final Negative Countervailing Duty Determination; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Republic of Korea, 54 FR 15513, 15517 (April 18, 1989), petitioners also argue that the Department should not set a zero deposit rate for this program unless it verfifies from respndents' tax returns that no benefits under the program are being received.

DOC Position

Because our final determination in this investigation, based on benefits received during the review period, is negative, the issue of program-wide change and its affect on the deposit rates is moot.

Comment 10

CBCC et al. state that Commerce has historically treated the Income Tax Exemption for Export Earnings incorrectly as an export subsidy. According to CBCC et al., this tax exemption is not an export subsidy because a direct tax rebate cannot logically be an export subsidy. CBCC et al. explain that the Brazilian tax exemption applies to profits, not specific sales, derived from all sources and therefore, should not be attributed as a tax savings benefit solely to export sales. In addition, CBCC argues that should the Department conclude that this program bestows an export subsidy, it cannot include benefits on sales to third countries in its calculation. According to CBCC et al., while the Department has broad discretion in constructing the precise method of calculating the net subsidy, the law, its legislative history, and past administrative decisions clearly indicate that the focus of calculating a net subsidy should be to determine the amount by which products imported into the United States benefit from a given subsidy. Therefore, CBCC et al. maintain that attributing tax savings which benefited domestic sales or third country sales to U.S. imports is clearly beyond the authority of the Department. CBCC et al. argue that the Department must determine that since all of the sales of the company benefit from the general reduction of corporate tax liability, that benefit must be allocated to the total sales of the corporation as opposed to exports alone.

According to petitioners, CBCC et al.'s argument has been rejected repeatedly by the Department. In particular, petitioners cite Certain Carbon Steel products from Brazil; Final Results of Countervailing Duty Administrative Review, 52 FR 829 (January 9, 1987) where the Department stated that when the amount of benefit received under a program is tied directly or indirectly to a company's level of exports, that program is an export subsidy.

DOC Position

We have consistently treated this program as an export program because the reduction in tax liability is applicable to export income only. See e.g., Certain Scissors and Shears from Brazil; Final Results of Administrative Review of Countervailing Duty Order 47 FR 10266 (March 10, 1982). It is the Department's position that when a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program is an export subsidy. Respondents have not provided any information that would merit reconsideration of the Department's methodology.

Comment 11

Petitioners allege that the Department incorrectly calculated the benefit from the CACEX working capital loan program. In the preliminary determination, the Department calculated the benefit by multiplying the principal, in Brazilian currency, by the interest differential of 15 percent. That figure was then multiplied by the term of the loan divided by 365. In its verification report, the Department stated that interest is calculated by applying a real interest rate to the principal amount which is indexed to a government bond neutral to the effects of Brazilian inflation. This amount is then converted back at the prevailing rate to Brazilian currency on the day of maturity of the loan. The different method reported in the Department's verification report would result in a greater benefit than was calculated in the preliminary determination. The Department should use a methodology consistent with its verification report if the report is accurate.

CBCC et al. state that the Department used the correct methodology in its preliminary determination for calculating benefits accuring from this program. The maximum interest differential that can be received is 15 percent. CBCC et al. argue further that since this program was eliminated by Resolution 1744 prior to the preliminary determination, and respondents currently receive no benefits from this program, this program no longer provides a subsidy and should be listed as terminated in the final determination.

DOC Position

According to our verification report, government officials did state that CACEX loans were indexed and a real interest rate was applied to the OTN/BTN denominated principal, and the resultant interest, valued in OTN/BTN, was converted into Brazilian currency upon maturity. However, upon analyzing the CACEX loan contracts of the companies which benefited from this program, we discovered that the nominal principal was adjusted by the change in the OTN/BTN index between the date of the loan and the date of maturity and an interest rate, which was freely negotiated between the bank and the company, was applied to this corrected principal amount. Therefore, we have adjusted our calculations to reflect this process.

With respect to CBCC's comment, we have stated our finding that the program was terminated.

Comment 12

CBCC et al. oppose the Department's determination concerning the exempted IOF tax on CACEX loans. In its preliminary determination, the Department found the exemption of these loans from the IOF tax to be a countervailable subsidy. However, these loans are used to purchase inputs which, according to the terms of the program, must be incorporated in a product to be exported. Therefore, CBCC et al. argue this is an indirect tax on inputs physically incorporated into exported goods, and does not constitute a countervailable subsidy under the GATT or U.S. countervailing duty law (see *Zenith Radio Corp.* v. *United States*, 437 U.S. 443 (1979)). Furthermore, they argue, the Department has verified that this exemption is available to a wide-range of loans including, for example, housing, infractructure and small business loans. As such, the Department should conclude that this exemption is generally available.

Petitioners claim that because the verification report states that interest is calculated on the principal amount indexed in OTN/BTN and converted to Brazilian currency on the day of maturity, then the IOF tax exemption must be calculated in the same way, *i.e.*, as a percentage applied to the indexed principal amount then converted into Brazilian currency at the rate prevailing on the last day of each month the loan is outstanding. The resulting exemption would be appreciably greater than that calculated by the Department in its preliminary determination. Petitioners also contest the claim of CBCC et al. that the IOF tax is an indirect tax on inputs to be incorporated in goods which are exported. They cite Certain Cotton Yarn Products From Brazil; Final Results of Countervailing Duty Administrative Review, 55 FR 3443 (February 1, 1990) to demonstrate that the Department has consistently rejected this argument.

DOC Position

We agree, in part, with petitioners. It is the Department's position that although the IOF is an indirect tax paid on financial transactions, it is not an indirect tax on a physical input of the exported product. See, e.g., Pig Iron from Brazil; Final Results of Administrative Review of Countervailing Duty Order 53 FR 9923 (March 16, 1984). It is proper to include the exemption from the IOF for CACEX loans as part of the measurement of the benefit from this program.

We reject CBCC et al.'s claim that the IOF exemption is generally available. The IOF exemption is a benefit tied to participation in the CACEX program, which is a program contingent upon exports. Had the firms obtained working capital loans outside the context of this program, they would not have received this exemption.

We reject petitioners' contention that the IOF exemption should be applied to an indexed principal amount. We verified that the IOF tax is applied to the nominal principal amount of the loan.

Comment 13

Petitioners allege that CCM received a countervailable tax benefit in addition to those previously alleged. Though the tax return on which the alleged tax benefit was claimed falls outside of the review period, petitioners state that it would be proper for the Department to use this tax return.

Citing Final Negative Countervailing Duty Determination; Certain Granite Products from Italy, 53 FR 27197, 27205 (1988), CCM rejects the petitioners' allegations as untimely. CCM states that petitioners were aware of this tax benefit before the preliminary determination but did not mention it until their case briefs. CCM cites the Department's regulations (19 CFR 355.31(c)(1)(i)) (1990) which require new subsidy allegations to be submitted not later than 40 days before the preliminary determination. In addition, CCM argues that because the tax return cited by petitioners falls outside of the period of review, it received no benefits during the time period for this investigation.

DOC Position

Because the Department collected the information on this alleged benefit (*i.e.*, the tax form) during verification, petitioners were justified in attempting to bring this alleged benefit to the attention of the Department. Therefore, petitioners' claim is not untimely. We reject petitioners' argument, however, on the basis that any alleged benefit would have been received by CCM after the review period.

Comment 14

Petitioners request that the Department expand the scope to include all imports of silicon metal, including those with less than 96 percent silicon. Petitioners allege that importers are circumventing duty deposit requirements by adding aluminum to the silicon metal to bring it below the 96 percent threshold. Aluminum is not an impurity in silicon metal, petitioners argue, when the silicon metal is used in primary or secondary aluminum production. They argue that their petition did not specify a minimum silicon content nor does the HTS category listed in the petition. Furthermore, silicon metal with less than 96 percent silicon falls within the class or kind of merchandise if the Department's five part test is used (See *Diversified Products Corporation* v. *United States* 6 CIT 155, 572 F. Supp. 883 (1983). Moreover, even if this merchandise did not fall in the same class or kind of merchandise, the Department would still have the authority to expand the scope to prevent circumvention.

CCM argues that petitioners have interpreted the tariff classification incorrectly. The HTS category lists no minimum silicon content but its predecessor category in TSUSA did state a minimum of 96 percent. Citing, for example, Certain Sulfur Chemicals from the United Kingdom, 55 FR 32119 (August 7, 1990), CCM asserts that the Department lacks the authority to expand the scope in a countervailing duty case to include merchandise which has not been accorded an ITC affirmative preliminary injury

determination. CCM further argues that petitioners' request is untimely. Petitioners should have appealed the Department's decision to the CIT within thirty days after publication of the initiation notice in the **Federal Register**. CCM cites *Republic Steel Co.* v. *United States*, 544 F. Supp. 901 (Ct. Int'l Trade 1982). CCM states that application of the Department's five part test is irrelevant because petitioners were aware that silicon metal containing less than 96 percent silicon existed at the time the investigation commenced. CMM cites *PPG Industries, Inc.* v. *United States*, Slip Op. 91–17 (March 11, 1991), in which the CIT held that application of the five part test to determine whether merchandise falls within the scope is appropriate only for products that have been modified after the investigation commences.

CBCC et al. likewise oppose petitioners' request for an expansion of the scope. CBCC et al. assert that the document submitted by petitioners as proof of circumvention by a Peoples Republic of China entity producing or importing silicon metal is dubious. Since the names of both the sender and the receiving party have ben blocked out, there is no way for the Department to authenticate this submission. The Department either should have rejected this submission or required more evidence from petitioners. Furthermore, CBCC et al. argue, the Department cannot expand the scope of the investigation and subject the relevant merchandise to countervailing duties unless the ITC has issued a preliminary affirmative injury determination in regard to that merchandise (see *Badger-Powhatten, Div. of Figgie* v. *United States*, 608 F. Supp. 653, 656 (Ct. Int'l Trade 1985)). CBCC et al. concur with CCM that this allegation is untimely. The Department, they contend, has already issued its preliminary determination and conducted verification. See *Certain Internal Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552 (1988).

DOC Position

We have determined to leave the description of the scope of this investigation unchanged. Prior to defining the scope of this investigation, we considered information from the petition, the Bureau of Mines, and the Customs Service. This information clearly indicates a common commercial meaning for silicon metal as a product with a silicon content between 96.00 and 99.99 percent. However, we have seen evidence that certain parties are selling or offering for sale merchandise containing less than 96 percent silicon and calling that product "silicon metal." Given the significant disparity in apparent value between the below 96 percent and above 96 percent "silicon metal," we are unable to conclude, based on the information before us, that the less than 96 percent product is of the same class or kind as the above 96 percent product.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting internal documents and ledgers, tracing information in the responses to source documents, accounting ledgers and financial statements, examination of original source documents and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in detail in the public version of the verification report, which is on file in the Central Records Unit (room B–099) of the Main Commerce Building.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of silicon metal from Brazil. Section 703(e)(1) of the Act provides that critical circumstances exist if there is a reasonable basis to believe or suspect that:

(A) The alleged subsidy is inconsistent with the Agreement, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In the preliminary determination, we determined that no critical circumstances existed because no benefits which constitute countervailable subsidies were being provided to manufacturers, producers, or exporters in Brazil of silicon metal. Therefore, no subsidies existed which were inconsistent with the Agreement.

For purposes of the final determination, we likewise find no benefits which constitute countervailable subsidies. Therefore, we find critical circumstances do not exist with respect to the subject merchandise from Brazil.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: June 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–13980 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–533–802, C–549–806]

Postponement of Final Countervailing Duty Determinations: Steel Wire Rope From India and Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we are postponing the date of the final determinations of the countervailing duty investigations of steel wire rope from India and Thailand to coincide with the date of the final determinations of the companion antidumping duty investigations of steel wire rope. The final determinations in the countervailing duty investigations of steel wire rope from India and Thailand are postponed until no later than September 4, 1991.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose or Vince Kane, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, at (202) 377–5414 or (202) 377–2815, respectively.

SUPPLEMENTARY INFORMATION: On March 8, 1991, we aligned the final determination dates of the countervailing and antidumping duty investigations of steel wire rope from India and Thailand (56 FR 11406). On May 13, 1991, pursuant to requests from respondents, we published a notice informing the public of the postponement of the antidumping duty determinations and public hearings for the investigations of steel wire rope

from Thailand, Taiwan, the People's Republic of China and India until no later than September 4, 1991 (56 FR 21988). Accordingly, we are also postponing the final countervailing duty determinations of steel wire rope from Thailand and India until no later than September 4, 1991.

In accordance with 19 CFR 353.38, case briefs or other written comments and rebuttal briefs in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 7, 1991, and August 14, 1991, respectively, in the case of India; and June 18, 1991, and June 25, 1991, respectively, in the case of Thailand. The public hearing for the final determination of the countervailing duty investigation of steel wire rope from India will be held on August 16, 1991, at 10 a.m. in room 3708 at the U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. We will not hold a public hearing for the investigation pertaining to Thailand because no parties requested a public hearing within ten days of publication of the preliminary determination. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: June 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–13982 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–DS–M

Michigan State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

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 301). Related part records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket Number: 90–030. *Applicant:* Michigan State University, Department of Pediatrics/Human Development, East Lansing, MI 48824–1317. *Instrument:* Rapid Karyotyping Analysis System, Model Cytoscan RK 2. *Manufacturer:* Image Recognition Systems Inc., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* December 6, 1990.

Docket Number: 90–107. *Applicant:* Iowa State University, Ames, IA 50011–3020. *Instrument:* Universal Rheometer, Model RHEOLAB MC10. *Manufacturer:* Physica Messtechnik, West Germany *Date of Denial Without Prejudice to Resubmission:* December 6, 1990.

Docket Number: 90–119. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Epitaxial Growth Reactor *Manufacturer:* Thomas Swan and Co., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* January 28, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–13983 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[Docket No. 901231–1134]

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice to importers.

SUMMARY: NMFS issues a notice to importers concerning intermediary nations trading in yellowfin tuna or products derived from yellowfin tuna harvested by purse seine in the eastern tropical Pacific Ocean (ETP) by Mexican vessels.

EFFECTIVE DATE: May 24, 1991.

ADDRESSES: E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS, 213–514–6196.

SUPPLEMENTARY INFORMATION: A U.S. embargo on imports of yellowfin tuna and products derived from yellowfin tuna caught by Mexican purse seine vessels operating in the ETP went into effect on February 22, 1991. The embargo was imposed as a result of a Federal Court order originally issued by the U.S. District Court for the Northern District of California. That embargo had been stayed on November 14, 1990, by the U.S. Court of Appeals for the Ninth Circuit, but the latter court lifted the stay on February 22, 1991.

On March 25, 1991, (56 FR 12367), NMFS published notification in the **Federal Register** of the effective dates and the scope of the intermediary nation provisions that apply under section 101(a)(2)(C) of the Marine Mammal Protection Act. That notification specified that NMFS will adhere to the terms of the court-ordered embargo with respect to any measures applied to intermediary nations and, therefore, will request the U.S. Customs Service to require declarations from importers stating that imports of yellowfin tuna and products derived from yellowfin tuna are not harvested with purse seines in the ETP by Mexican vessels. This declaration is in addition to the Yellowfin Tuna Certificate of Origin, SF 370–1, also required at the time of entry.

The declaration must be provided at the time of entry, and in substantially the following format:

Declaration of Compliance With Court Order

The undersigned declares that, having made appropriate inquiry, and based on written evidence in his possession, no yellowfin tuna or yellowfin tuna product included in this shipment were harvested with purse seines in the eastern tropical Pacific Ocean by vessels from Mexico.

Signature
Name of importer
Printed name and title of individual signing

Importations from intermediary nations without the declaration will be refused entry into the United States.

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

Dated: June 6, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 91–13877 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 725.

SUMMARY: On Monday, October 22, 1990, notice was published in the **Federal Register** (55 FR 42621) that an application (P368A) had been filed by Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450, and Dr.

Daniel P. Costa, Long Marine Laboratory, Center for Marine Studies, University of California, Santa Cruz, CA 95064. A scientific research permit was requested to obtain ten (10) rehabilitated beached/stranded California sea lions (*Zalophus californianus*) from the Naval Ocean Systems Center, rehabilitation centers, or aquaria on the west cost of California, and train them for open-water release to carry a videocamera to film underwater activities of whales and to participate in studies of sea lion diving physiology.

Notice is hereby given that on June 6, 1991, as authorized by the provisions of the Marine Mammal Protection Act and the Endangered Species Act, the National Marine Fisheries Service issued a Permit for the above activities subject to the Special Conditions set forth therein.

The Permit is available for review by appointment by interested persons in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910, (301) 427–2289; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415, (213) 514–6196.

Dated: June 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–13879 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Request for Modification to Scientific Research Permit No. 598, Alaska Fisheries Science Center (P77#28).

Notice is hereby given that the Alaska Fisheries Science Center (NMML), National Marine Fisheries Service, 7600 Sand Point Way NE., Bin C15700, Seattle, Washington 98115–0070, has requested a modification to Permit No. 598 pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 598 issued on July 23, 1988 (52 FR 27697) authorized no more than a total of 32,500 northern fur seal pups (*Callorhinus ursinus*) to be taken annually for population monitoring and assessment programs. The research involved capturing, restraint to affix radio transmitters, time-depth recorders, satellite-linked instruments, swim speed recorders, and/or other environmental sensors and behavioral recorders, lavaging or enema samples taken, and release of the animal.

Three previous modifications to this permit have been requested. Modification No. 1 authorized a total of up to 80 northern fur seals per year to be incidentally killed or injured during authorized research activities. An additional 3,260 northern fur seals were authorized to be taken annually to allow continuation of essential population monitoring and assessment programs by specified methods. Modification No. 2 authorized up to 30,000 juvenile male northern fur seals to be taken annually by roundup. Up to 3,900 of the 30,000 male seals were authorized to be captured by physical restraint, marked, handled and released annually and the rates of survival monitored. A request for modification to Permit #598 was announced in the **Federal Register** on May 23, 1991 (56 FR 23684) to chemically restrain (with 1.2- 1.5 mg/kg of Telazol) rather than physically restrain large adult males too large to be handled safely during the attachment of satellite tags and the removal of entangling debris.

A new modification has now been requested to take up to 81 northern fur seals (*Callorhinus ursinus*) in the following manner: (a) Harass during attempts to encircle (an unspecified number of seals outside the groups around which nets are set may be disturbed during pelagic capture attempts); (b) capture by using a floating monofilament net, noose poles, and/or physical restraint; (c) handling to include marking (using numbered, colored plastic tags), weighing, identifying sex, measuring and obtaining blood samples; (d) attachment of radio transmitters, time-depth recorders, satellite-linked instruments, and/or other environmental sensors and behavioral recorders to up to 12 animals; (e) release of all animals; and (f) recapture of the six seals instrumented with time/depth recorders. These instruments are small, submersible computers which store data in memory chips like those used in any other computer. To obtain the stored data, they must be physically recaptured and plugged into a home computer. A release mechanism by which the computer can be recovered without recapturing the animal has not been devised. Every effort will be made to safely recapture the seals to remove the instruments. Authorization is requested for lethal take as a last resort in order to retrieve the data stored in the submersible computers attached to the animals.

Taking is requested from June-October 1991 and 1992 on the high seas and in coastal waters of Washington State.

The NMML is responsible for assessing impacts on the fur seal population from incidental take in the high seas squid driftnet fishery under the Driftnet Impact Monitoring Assessment and Control Act of 1987, and for obtaining information toward a moratorium on driftnet fishing under U.N. Resolution 44/255. The proposed study is in support of this responsibility.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this proposed modification, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, SSMC1, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication date of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular proposal would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this proposed modification are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above are available for review, by appointment, by interested persons in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, SSMC1, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802 (907/586–7221);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115–0070 (206/526–6150);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196); and

Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole St.,

room 106, Honolulu, Hawaii 96822–2396 (808/943–1221).

Dated: June 3, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–13878 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

The National Futures Association's Proposed Revisions to Its Transaction Assessment Fee Levels and Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed registered futures association rule changes.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has determined pursuant to section 17(j) of the Commodity Exchange Act ("Act") to review the National Futures Association ("NFA") proposed amendments to its Bylaws 1301 and 1302. The proposed amendments to Bylaw 1301 would increase the transaction assessment fees which each NFA member futures commission merchant ("FCM") and leverage transaction merchant ("LTM") must invoice to and collect from their customers for remittance to NFA. Transaction assessment fees are the largest source of revenue for NFA to fund its operations. NFA also has proposed an amendment to its Bylaw 1302 which would revise the schedule by which NFA collects member transaction assessment fees from a quarterly to a monthly basis. The Commission has determined that publication of NFA's proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Act.

DATE: Comments must be received by June 27, 1991.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated May 29, 1991 and received by the Commission on May 30, 1991, the NFA submitted, pursuant to section 17(j) of the Act, proposed amendments to NFA Bylaws 1301 and 1302. NFA's submission indicated that it intended to make the proposed amendments effective on July 1, 1991, unless the Commission, consistent with section 17(j) of the Act, notified NFA, within ten days of the Commission's receipt of the submission, that the Commission had determined to review the amendments.

On June 7, 1991, the Commission determined to review NFA's proposed amendments to Bylaws 1301 and 1302 pursuant to section 17(j) of the Act and so informed NFA of its determination.[1]

II. Description of NFA's Proposal

A. Increase to Transaction Assessment Fee Levels—NFA Bylaw 1301

NFA Bylaw 1301 establishes a transaction assessment fee schedule whereby each NFA member FCM and LTM must collect a specified per trade fee from their customers for remittance to NFA. Transaction assessment fees, particularly those paid through FCMs, are by far the primary source of revenue for NFA to fund its operations.[2]

Under NFA's proposed amendments to Bylaw 1301, NFA would increase its transaction assessment fees for the first time since NFA began operation in 1982. The subject proposal would return NFA's assessment fees to the levels they were at immediately prior to the last assessment fee revision on July 1, 1989.[3]

Current NFA Bylaw 1301(b)(i) (A) through (D) establishes an assessment rate of $.20 per each round-turn futures contract and $.12 per each option transaction carried by an FCM for a customer on either a domestic contract market or foreign board of trade.[4] NFA's proposed amendments to Bylaw 1301(b)(i) (A) through (D) would increase these respective FCM assessment rates to $.24 per round-turn futures contract and $.14 per option contract.

NFA has proposed further to amend Bylaw 1301(b)(i)(E) to increase the transaction assessment fee for dealer options carried by members FCMs on behalf of customers from $.12 to $.14 per option trade.[5]

NFA also has proposed an amendment to its Bylaw 1301(c)(i) which would increase the member LTM transaction assessment fee rate from $.12 to $.14 per leverage contract transaction executed with a customer. At the present time, however, there are no LTMs registered under the Act.

NFA maintains that is proposed transaction assessment fee increases are necessary in order to achieve its ongoing goal of maintaining its working capital between $5 million and $6 million.[6]

NFA first informed the Commission of its goal of reaching and maintaining a working capital level of $5 million to $6 million in 1988. At the time, NFA was requesting Commission approval for a reduction of transaction assessment fees from $.28 to $.24 per round-turn futures contract and from $.16 to $.14 per option transaction to be established at the start of NFA's 1989 fiscal year on July 1, 1988.[7] At the time of that decrease, NFA

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[1] *See* June 7, 1991 letter from Lynn K. Gilbert, Deputy Secretary of the Commission, to Daniel J. Roth, NFA General Counsel.

[2] Transaction assessment fees constituted approximately 88% of NFA's total revenue for the period of July 1, 1990 through March 31, 1991, the first nine months of NFA's 1991 fiscal year. *See* NFA Monthly Status Report to the Commission (April 1991).

[3] *See* June 19, 1989 letter from Andrea M. Corcoran, Director of the Commission's Division of Trading and Markets ("Division" or "T&M"), to Daniel J. Roth, NFA General Counsel (letter allowing proposed transaction assessment fee decrease to be put into effect).

[4] For the purposes of collecting transaction assessment fees, NFA Bylaw 1301's definitions of customer are generally consistent with Commission Regulation 1.3(k), with certain exceptions. First, NFA Bylaw 1301(b)(i) states that an FCM member is not required to pay an assessment fee for any contract market transactions done for: (1) a person having privileges of membership on a contract market where such contract is entered or (2) a business affiliate of such FCM that directly or indirectly owns 100% of or is owned 100% by or has 100% ownership in common with such FCM provided such FCM has privileges of membership on the contract market where such contract is entered or (3) an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM.

Second, Bylaw 1301(b)(i) also specifies that an FCM member is not required to pay an assessment fee for foreign board of trade transactions carried for a customer on an "omnibus account basis for another FCM Member for which assessments are payable to NFA by the other FCM."

[5] NFA Bylaw 1301(b)(i)(E) does not require a member FCM to collect an assessment fee for dealer options carried by such FCM for a customer which is a "business affiliate of such FCM that directly or indirectly owns 100% of or is owned 100% by or has 100% ownership in common with such FCM Member.

[6] NFA's working capital, in this context, equals the difference between its total current assets and total current liabilities, and customarily is held in the form of liquid assets such as United States treasury bills or cash deposited into insured money market accounts.

[7] *See* March 8, 1988 letter from Daniel J. Roth, NFA, General Counsel, to Jean A. Webb, Secretary of the Commission (submission letter). That assessment fee reduction was approved by the Commission on June 15, 1988. *See* June 15, 1988 letter from Lynn K. Gilbert, Deputy Secretary of the Commission, to Daniel J. Roth, NFA General Counsel (Commission approval letter).

had a working capital level of approximately $13.3 million.[8]

NFA reiterates this goal in 1989, when it further reduced its assessment rates to their current levels of $.20 per round-turn futures contract and $.12 per option transaction.[9] NFA has a working capital level of approximately $15.1 million at the time of that decrease.

During the two years since the institution of its current transaction assessment fee rates, NFA has been operating at a net income loss which has required it to draw down its level of working capital. In NFA's 1990 fiscal year of July 1, 1989 to June 30, 1990, NFA had a net income loss of approximately $3.6 million dollars and thus had to draw down its working capital from $15.1 million dollars to $11.5 million dollars.[10]

As of March 31, 1991, NFA had a net income loss of $4.9 million for the first nine months of its 1991 fiscal year.[11] NFA projects that its working capital will be approximately $6.8 million on June 30, 1991—the end of NFA's 1991 fiscal year.

Based upon the current assessment fee rates and its projected level of public participation in futures markets, NFA believes that its working capital will fall below $5 million during the third quarter of its 1992 fiscal year (*i.e.*, sometime between January 1, 1992 and March 31, 1992).

Accordingly, NFA contends that it must increase its transaction assessment fees to $.24 for each round-turn futures contract and $.14 per option transaction in order to maintain sufficient working capital to cover anticipated expenses. NFA also asserts that such a level of working capital would provide a sufficient cushion to ensure that NFA's performance of its regulatory responsibilities would not be impaired by some unforeseen drop in revenue. NFA does not anticipate reducing any of its planned administrative or capital expenditures in order to increase its working capital level.

[8] *See* NFA 1988 Annual Review.

[9] *See* June 8, 1989 letter from Daniel J. Roth, NFA General Counsel, to Jean A. Webb, Secretary of the Commission (submission letter requesting that the Commission allow NFA to put transaction assessment fee reduction into effect at the start of NFA's 1990 fiscal year on July 1, 1989). *See also* June 1989 letter from Andrea M. Corcoran, Director of T&M, to Daniel J. Roth, NFA General Counsel (letter allowing proposed transaction assessment fee decrease to go into effect).

[10] *See* NFA 1990 Annual Review.

[11] *See* NFA Monthly Status Report to the Commission (April 1991).

B. Transaction Assessment Fee Collection Procedures—NFA Bylaw 1302

NFA's proposal also includes an amendment to Bylaw 1302 which would change NFA's schedule for collecting member transaction assessments from a quarterly to a monthly collection cycle. NFA is proposing this more frequent collection cycle to address the possibility that its level of working capital, which is largely based upon assessment fees,[12] would not be sufficient to meet NFA's necessary budgetary expenditures during the three months between the current collection dates for transaction assessment fees.

II. Request for Comments

The Commission requests comments on any aspect of NFA's proposed rule amendments that members of the public believe may raise issues under the Commodity Exchange Act or the Commission's regulations.

Copies of NFA's proposed rule amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, except to the extent that the proposal may be entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views or arguments on NFA's proposed rule amendments or with respect to other materials submitted by the NFA in support of the proposal should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on June 10, 1991.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–14071 Filed 6–11–91; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Academy Candidate Personal Data Record; USAFA Form 146; OMB No. 0701–0064.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 30 Minutes.

Responses per Respondent: 1.

Number of Respondents: 11,400.

Annual Burden Hours: 5,700.

Annual Responses: 11,400.

Needs and Uses: This form is used to collect data on U.S. Air Force Academy candidate's family and personal background for use in determining eligibility. Information may be used to select appointees to the Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: June 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–13885 Filed 6–11–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Academy Candidate Activities Record; USAFA Form 147; OMB No. 0701–0063.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 22.5 minutes.

[12] *See supra* footnote 2 and accompanying text.

Responses per Respondent: 1.
Number of Respondents: 21,000.
Annual Burden Hours: 7,875.
Annual Responses: 21,000.
Needs and Uses: This form is used to collect data on U.S. Air Force Academy candidate's high school athletic, nonathletic, and extracurricular activities for use in determining eligibility. Information is used to select appointees to the Academy.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington Virginia 22202–4302.

Dated: June 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–13886 Filed 6–11–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Intelligence Agency Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Friday, 12 July 1991 (9 a.m. to 5 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Technologies and Applications.

Dated: June 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–13887 Filed 6–11–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates/Time of Meeting: 27–28 June 1991.
Time: 0900–1600 hours.
Place: Pentagon, Washington, DC.
Agenda: The Logistics and Sustainability Issue Group of the Army Science Board will meet to continue a study of "Logistic Support and Sustainment of Operation Desert Shield." This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–14077 Filed 6–11–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates/Time of Meeting: 27 June 1991.
Time: 1130–1600 hours.
Place: IBM, Armonk, New York.
Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with IBM representatives to discuss their initiatives for measuring and furthering the vitality of their professional R&D workforce. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–14079 Filed 6–11–91; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) Amendment for the Delaware River Comprehensive Navigation Study, Main Channel Deepening (Modifying the Delaware River, Philadelphia to the Sea, Federal Navigation Project)

AGENCY: Philadelphia District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action evaluates the need for and alternative methods of improving the navigation channel to accommodate commercial vessels transiting the Delaware River between Philadelphia, Pennsylvania and the mouth of the Delaware Bay. This need is based on current shipping problems resulting from delays in intermodal transfers, insufficient channel dimensions and other physical aspects affecting waterbone commerce. Identification of water and related land resource problems in the study area has evolved from prior studies, current investigations and continuing public coordination.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DEIS Amendment should be addressed to Mr. Jerry Pasquale (215) 597–6840, U.S. Army Corps of Engineers, CENAP-PL-E, U.S. Custom House, 2nd and Chestnut Streets, Philadelphia, Pennsylvania 19106–2991.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The study is being conducted in response to a resolution by the Committee on Public Works of the United States Senate, dated March 1, 1954 and a resolution by the Committee on Public Works of the House of Representatives, dated December 2, 1970.

b. The proposed objective is to improve the handling of bulk commodity products, which account for the majority of ship cargoes using the existing Delaware River, Philadelphia to the Sea, Federal navigation project. These commodities, which include crude oil, coal and iron ore, are currently shipped

in partially loaded vessels due to draft restrictions. The proposed action would provide deeper access to the major import and export facilities along the channel, including six oil refineries, the Conrail coal and iron ore facilities at Piers 122 and 124 in Philadelphia, PA and the Beckett Street Terminal in Camden, NJ. Based on economic and environmental analyses, a two-way, full-width channel with a depth of 45 feet below mean low water (mlw) was selected as the recommended plan of improvement. From the Beckett Street Terminal through Philadelphia Harbor, the 400 to 500-foot width west side channel, now at a depth of 40 feet below mlw would be deepened while the east side channel would remain at 37 feet at mlw. Between the Philadelphia Navy Yard and Delaware Bay, the existing channel would be deepened for its full 800-foot width. In the bay, the full 1,000-foot width channel would be deepened. The trapezoidal access channel to the Beckett Street Terminal's bulk berths would also be deepened. This would modify the Delaware River in the Vicinity of Camden project. The existing Marcus Hook and Mantua Creek anchorages would be partially deepened. In addition, 17 channel bends would be widened to enhance navigational safety. Provision of a deeper channel would reduce or eliminate non-structural practices such as lightering, and light loading, now in use by the restricted vessels. In addition, several users are likely to employ larger vessels if a deeper channel is provided.

c. A critical element in the planning of any navigation project is the disposal of dredged material. Approximately six million cubic yards of material are dredged annually for maintenance of the existing 40-foot Delaware River, Philadelphia to the Sea project. Eight active, upland disposal areas and one open water disposal area are currently used for maintenance of the existing project. Additional dredged material disposal sites will be required to adequately handle dredged material from the existing project in the future. Project deepening would reduce the disposal capacity of existing sites and accelerate the need for replacement sites. The proposed action includes acquisition of three previously used, upland dredged material disposal sites, the use of two active, upland disposal sites currently dedicated for maintenance of the Chesapeake and Delaware Canal, and beneficial uses of clean, sandy material in Delaware Bay. These additional sites will provide sufficient dredged material disposal capacity to handle deepening and maintenance dredging operations over the full 50-year project life (2000–2050).

d. Without the implementation of improvements for the Delaware River channel, the maximum draft of vessels using the waterway would be limited to the draft now accommodated. Existing channel dimensions reduce the economic efficiency of larger ships moving through this major commercial area. Crude and refined oil products are the highest volume commodity in United States freight trade, and account for the overwhelming majority of tonnage moved in the Delaware River. The refineries located along the Delaware River account for 10 percent of the refinery capacity of the United States and provide petroleum products throughout the mid-Atlantic states. Approximately 30 percent of all crude oil that comes to the Delaware River facilities is lightered. In addition, about 50 percent of the crude oil vessels, 60 percent of the coal vessels and 80 percent of the iron ore vessels are partially loaded.

2. Alternatives

a. Alternative measures considered to improve navigation in the study portion of the Delaware River included no action, non-structural measures and full-width or partial-width channel deepening. Partial-width channel deepening entailed deepening the inbound lane, since the majority of vessels travel upstream loaded and downstream partially or completely unloaded. The range of depths considered for deepening was 41 to 46 feet at mlw. Non-structural measures such as the use of tides to increase available channel draft and lightering are already employed and will continue to be included to the maximum extent practical. In addition, channel bend widening was considered to improve the navigational safety of larger vessels now using the waterway.

b. Additional dredged material disposal capacity will be required for maintenance of the existing project and any channel modifications for the 50-year project life. Alternative structural measures considered for increasing disposal capacity included raising dikes at existing sites, using sedimentation basins to reduce shoaling, acquisition of new upland sites, aquatic disposal in Delaware Bay or the ocean, and beneficial uses of dredged material such as beach nourishment and habitat creation. Non-structural alternatives included dewatering practices to facilitate greater consolidation of dredged material at existing sites, reusing dredged material, and reducing dredging activities.

3. Scoping

a. Numerous study reports have been published since 1954 concerning all aspects of the proposed project. Evaluation of the previously collected data has initiated both Federal interest and local support. In addition to these reports, several reconnaissance studies were conducted to determine waterway problems and the Federal interest in further study.

b. A notice of intent to prepare a DEIS for this project was published in vol. 54, No. 85 of the **Federal Register** on May 4, 1989. A notice of availability for that DEIS was published in vol. 55, No. 135 of the **Federal Register** on July 13, 1990. Based on the comments received on the DEIS, it has been determined that a DEIS amendment is necessary. Significant issues to be addressed in the amendment include the chemical characteristics of the sediments proposed for dredging, potential changes in salinity patterns of the Delaware Estuary as a result of channel deepening, potential impacts to groundwater resources in the project area, the feasibility of an oil pipeline system to limit the need for a nagivation channel within the Delaware River, the impact of rock blasting on fishery resources in the vicinity of Marcus Hook, PA, and an analysis of alternatives to the use of the existing, open water disposal site in Delaware Bay.

c. A study initiation letter for the current study was issued to the public on April 29, 1982. Since then several interim reports have been prepared and released to the public for their review and comment. In addition, public newsletters were issued in March 1984, August 1985, and September 1989. A public notice announcing the availability of the DEIS was issued to the public on July 6, 1990. A scoping meeting for preparation of the DEIS was held on June 22, 1989. Since release of the DEIS, several coordination/scoping meetings have been held with various agencies and groups. At this time, no additional scoping meetings are scheduled.

4. Availability

It is anticipated that the amendment to the DEIS will be released for public comment in August 1991.

John A. Burnes,

Asst. Chief, Planning Division.

[FR Doc. 91–13944 Filed 6–11–91; 8:45 am]

BILLING CODE 3710-GR-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, June 19, 1991 beginning at 1:30 p.m. in the Oval Room, on the 43rd Floor, One World Trade Center, New York, New York.

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 discussions of amendment of Compact Section 15.1(b) to fund the F. E. Walter Reservoir project; upper Delaware ice diversion project; golf course water use inventory; settlement of Scott Paper Company appeal; and proposed policy and regulations concerning the transfer of water and wastewater to and from the Delaware River Basin.

The subjects of the hearing will be as follows:

Proposed Amendments to Comprehensive Plan and Water Code of the Delaware River Basin Relating to Water Conservation Performance Standards for Plumbing Fixtures and Fittings. Notice was given in the May 9, 1991 issue of the **Federal Register** that the Commission would hold a public hearing on June 19, 1991 to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The amendment would revise the effective date of Resolution No. 88–2 (Revised) from January 1, 1991 to July 1, 1991.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Manetas Farms, Inc. D–81–40 RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 46.5 million gallons (mg)/30 days of water to the applicant's agricultural irrigation system from Well No. 1 and Pond Nos. 1, 2, and 3. Commission approval on July 30, 1986 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells and ponds remain limited to 46.5 mg/30 days. The project is located in Fairfield Township, Cumberland County, New Jersey.

2. *Broad Run Valley, Inc. D–85–27 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 24 mg/30 days of water to the Wilkinson Farm Water Supply Project to serve an existing farm operation and 150 existing and proposed residential dwelling units from Well No. W–3. Commission approval on May 28, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 24 mg/30 days. The project is located in New Garden Township, Chester County, Pennsylvania.

3. *Parkesburg Borough Authority D–89–91 CP.* An application to upgrade an existing 0.36 million gallons per day (mgd) sewage treatment plant (STP), which serves the Borough of Parkesburg. The wastewater influent will continue to be domestic sewage. The STP is located in the southeast corner of Parkesburg Borough, Chester County, Pennsylvania and will continue to discharge to Little Buck Run, a branch of Buck Run which is a tributary of the West Branch Brandywine Creek.

4. *Alco Industries D–90–109 (D).* An application for approval of a discharge of up to 0.32 mgd of ground water treated for removal of volatile organic compounds (VOC). The ground water will be treated using an air stripper and discharged to Crossmans Run, a tributary of the Schuylkill River. The treatment facility is located at the Alco Industries site (formerly Synthane-Taylor) adjacent to Crossmans Run and the Schuylkill River, in Upper Providence Township, Montgomery County, Pennsylvania.

5. *Green Hills Management Company D–91–6.* An application for approval of a ground water withdrawal project to supply up to 3.12 mg/30 days of water to the applicant's office complex from existing Well Nos. 1 and 2, and to limit the withdrawal from all wells to 3.12 mg/30 days. The project is located in Cumru Township, Berks County, Pennsylvania.

6. *Joint Municipal Authority of Wyomissing Valley D–91–9 CP.* A sewage treatment plant (STP) project to modify the applicant's existing 4.0 mgd STP which serves the Boroughs of West Reading, Wyomissing, Shillington, Mohnton, and West Lawn, portions of Wyomissing Hill; portions of Spring and Cumru Townships, and the City of Reading, all in Berks County, Pennsylvania. The STP is located adjacent to Wyomissing Creek, in the City of Reading, approximately 1,000 feet upstream of its confluence with the Schuylkill River. Treated effluent will continue to discharge via the existing outfall to Wyomissing Creek.

7. *Schuylkill County Municipal Authority D–91–16 CP.* An application for approval of wastewater treatment project that will provide primary settling facilities to treat an average of 0.17 mgd of wastewater generated at the applicant's proposed Broad Mountain Water Treatment Plant. The facilities will serve portions of the applicant's water distribution system in central Schuylkill County. The treated wastewater, to consist mainly of filter backwash, will be discharged to Wolf Creek. The facilities will be located by the north bank of Wolf Creek, just south of the Blythe Township line, in New Castle Township, Schuylkill County, Pennsylvania.

8. *Hackettstown Municipal Utilities Authority D–91–30 CP.* A sewage treatment plant (STP) upgrade and expansion project to increase the average design flow treatment capacity of the Hackettstown Water Pollution Control Plant from 1.65 mgd to 3.30 mgd. The STP will continue to serve the growing population of Hackettstown and portions of the surrounding municipalities, including Mansfield and Independence Townships in Warren County and Washington Township in Morris County. The STP is located on Esna Drive just east of the Musconetcong River and the treated effluent will continue to discharge to the Musconetcong River in Washington Township, Morris 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.

* * * * *

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1992. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, water quality standards, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it will be available for examination and review by interested individuals at the Commission's offices upon request beginning July 1, 1991. The public review and comment period will end August 2, 1991. Please contact Seymour P. Gross for further information.

Dated: June 4, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91–13852 Filed 6–11–91; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 12, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 6, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Application and Continuation Application for Grants under the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP).

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden

Responses: 110, Burden Hours: 2,080.

Recordkeeping Burden

Recordkeepers: 0, Burden Hours: 0.

Abstract: This form will be used by secondary and postsecondary institutions to apply for funding under the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP). The Department will use the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New.

Title: Even Start Evaluation In-Depth Study.

Frequency: One-time.

Affected Public: Individuals or households; State or local governments.

Reporting Burden

Responses: 2,000, Burden Hours: 854.

Recordkeeping Burden

Recordkeepers: 0, Burden Hours: 0.

Abstract: This study will collect information about ten sites implementing the Even Start Program. The Department will use this information for program evaluation and assessment.

Office of Intergovernmental and Interagency Affairs

Type of Review: New.

Title: Center For Choice in Education Hotline.

Frequency: On occasion.

Affected Public: Individuals or households, State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Reporting Burden

Responses: 5,000, Burden Hours: 585.

Recordkeeping Burden

Recordkeepers: 0, Burden Hours: 0.

Abstract: The Center for Choice Hotline functions as a resource for information and assistance on parental choice in education. The Department will maintain a database of callers who call the center to provide them with information on parental choice in education.

Office of Postsecondary Education

Type of Review: Extension.

Title: Procedures for Certification of Need Analysis Servicers' Systems.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Non-profit institutions.

Reporting Burden

Responses: 70, Burden Hours: 35.

Recordkeeping Burden

Recordkeepers: 0, Burden Hours: 0.

Abstract: This form will be used by institutions of higher education who enter into an agreement with the Secretary for the purpose of obtaining need analysis system certification. This information will be used by the Department to systematically determine whether each need analysis servicer meets the requirements for certification.

[FR Doc. 91–13908 Filed 6–11–91; 8:45 am]

BILLING CODE 4000–01–M

Training Programs for Educators—Innovative Alcohol Abuse Education Programs

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year (FY) 1991.

SUMMARY: The Secretary announces absolute priorities for a grant competition to be held in FY 1991 under section 4607(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3156–1(b)). Under this program, financial assistance is provided to public or private organizations, institutions, or agencies to train educators in strategies designed to mitigate problems associated with alcoholism in the family. The absolute priority would require that each project: (1) provide for region-wise services in one of five areas, and (2) train educators who serve children in grades 5–8.

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Madeline Bosma, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2130, Washington, DC 20202–6439. Telephone: (202) 401–3510. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC, 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Projects supported under section 4607(b) of the Elementary and Secondary Education Act of 1965 (ESEA) must provide training in four statutorily mandated areas. Each project must:

Increase educators' awareness of children's problems that may be caused by an alcoholic parent;

Enhance educators' ability to identify children at risk for alcohol abuse;

Inform educators concerning referral of children of alcoholics for appropriate professional treatment; and

Train educators to inform the public about the special problems of children who have an alcoholic parent.

With 1990 funds appropriated under section 4607(a) of the ESEA, the Department is currently developing the following: A handbook for educators on alcohol abuse prevention; a module on high-risk youth that will be added to Learning to Live Drug Free (the Department's recently issued drug prevention curriculum model); instructional materials on alcohol abuse education designed to assist educators of children of special populations (Hispanics, Blacks, Native Americans, and the economically disadvantaged); and materials for use by educators in classrooms where children of several cultures are represented.

These materials will be available by October 1991, and will be provided to grantees for use in training programs funded under these priorities.

By establishing an absolute priority mandating the provision of region-wide services, the Department hopes that: Training about alcohol abuse education will be available to educators in every State, providing maximum coverage of students; the funding available for this important program will be maximized through coordination and integration with other alcohol abuse prevention training efforts across the region; this competition will integrate prevention training efforts at SEAs and LEAs; and duplication of existing training efforts will be avoided.

The Department has drawn regional boundaries for the provision of training and other prevention services in its regulations for Regional Centers for Drug-Free Schools and Communities. The boundaries in the absolute priority will coincide with the regional center boundaries. The Department has encouraged States to work toward coordinated, regional responses to the provision of prevention services, and believes that this program provides another opportunity for States to share information and approaches—preferably among already developed networks about alcohol abuse prevention.

On January 29, 1991, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (56 FR 3386).

Except for minor editorial revisions, there are no differences between the proposed priorities and these final priorities.

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, two parties submitted comments. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows. Technical and other minor changes are not addressed. Suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are listed without discussion.

Comments: One commenter requested that the Department pay particular attention to the training needs of rural educators in devising strategies that mitigate problems associated with alcoholism in the family. The other commenter recommended changes in the statutorily mandated training areas.

Discussion: The absolute priority for region-wide training for educators is intended to focus on the needs of educators from rural as well as urban and suburban communities. As long as these needs are met, the Secretary does not believe one type of training should receive particular emphasis over another.

Changes: None.

Priorities

Absolute Priority

In addition to providing training in all of the statutorily mandated areas, the Secretary gives absolute preference under 34 CFR 75.105(c)(3) to applications for projects that:

(1) Provide training to educators who serve children in grades 5–8; and

(2) Provide for region-wide training in one of the following geographic areas:

(a) Northeast:

Connecticut	New Jersey
Delaware	New York
Maine	Ohio
Maryland	Pennsylvania
Massachusetts	Rhode Island
New Hampshire	Vermont

(b) Southeast:

Alabama	Puerto Rico
District of Columbia	South Carolina
Florida	Tennessee
Georgia	Virginia
Kentucky	Virgin Islands
North Carolina	West Virginia

(c) Midwest:

Indiana	Missouri
Illinois	Nebraska
Iowa	North Dakota
Michigan	South Dakota
Minnesota	Wisconsin

(d) Southwest:

Arizona	Mississippi
Arkansas	New Mexico
Colorado	Oklahoma
Kansas	Texas
Louisiana	Utah

(e) West:

Alaska	Nevada
American Samoa	Northern Mariana Islands
California	Oregon
Guam	Republic of Palau
Hawaii	Washington
Idaho	Wyoming
Montana	

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet the absolute priority.

Weighting for Selection Criteria

The Education Department General Administrative Regulations at 34 CFR 75.210(c) authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 75.210 to bring the total possible points for those criteria to a maximum of 100. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Quality of key personnel: Section 75.210(b)(4). Three (3) additional points will be added for a possible total of 10 points for this criterion.

Budget and cost effectiveness: Section 75.210(b)(5). Ten (10) additional points will be added for a possible total of 15 points for this criterion.

Evaluation plan. Section 75.210(b)(6). Two (2) additional points will be added for a possible total of 7 points for this criterion.

Competitive Preference

Within the absolute priority, under 34 CFR 75.1905(c)(2)(i) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards up to 15 additional points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria in 34 CFR 75.210 and are awarded to projects that:

(a) Demonstrate a comprehensive understanding of alcohol abuse as it relates to children of alcoholics and their families;

(b) Demonstrate the capability to establish relationships with local educational agencies, State educational agencies, and institutions of hgher education that are sufficiently sound to facilitate the replication of the training to be provided under this grant; and

(c) Demonstrate the capability to contribute to increased public awareness of issues related to children of alcoholics and their families through a dissemination network.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 3156–1(b).

(Catalog of Federal Domestic Assistance Number 84.238—Programs for Educators—Innovative Alcohol Abuse Education Programs)

Dated: June 6, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–13905 Filed 6–11–91; 8:45 am]

BILLING CODE 4000–01–M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the 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 their opportunity to attend.

Date and time: June 27, 1991, 1 p.m. until 5:30 p.m., and June 28, 1991, 9 a.m. until 5:30 p.m.

Place: Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Robert K. Goodwin, Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., room 3682, ROB–3, Washington, DC 20202, telephone (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically Black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically Black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically Black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

The proposed agenda includes concurrent Task Force meetings on Thursday, June 27, and a full Board meeting on Friday, June 28, 1991. The full Board meeting will include consideration of recommendations proposed by the Task Forces, an update on current activities to implement Executive Order 12677, and the continued discussion of proposed public and private sector strategies to strengthen historically Black colleges and universities.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative, U.S. Department of Education, ROB–3, room 3682, Washington, DC from the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: June 7, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–13946 Filed 6–11–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award: Oregon Art Institute

AGENCY: U.S. Department of Energy (DOE), Richland Support Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Support Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to make a noncompetitive financial assistance award under grant No. DE–FG51–91R020036 to the Oregon Art Institute (OAI) in support of the development of an energy conscious master plan for the expansion of the OAI facility located in Portland, Oregon.

SCOPE: The OAI is providing an unique environmental whereby recent building design and construction/renovation technologies are brought together with recent advancements in energy efficiency standards for a facility that combines various functional activities in one building envelope. Detailed planning will be needed for the expansion and renovation of the OAI properties, which include challenges such as the diversity in physical layout and energy use associated with an art museum/college. By providing an emphasis on energy efficiency for such a facility, better understanding of the design and use of State-of-the-art heating, ventilating, air conditioning (HVAC) and lighting systems is expected to be achieved. The Department of Energy will to participate in the development of the master plan for this activity as it directly relates to one of the primary DOE missions.

Funding for this project is being provided by the Office of Conservation and Renewable Energy as authorized by Public Law 95–91, Department of Energy Organization Act, and specifically mandated by Congress in the FY 1991

appropriation actions. The estimated DOE share of costs for this project is $175,000.

ELIGIBILITY: In accordance with 10 CFR 600.7(b)(2)(i)(B), the DOE has determined that the award of a grant on a noncompetitive basis to the OAI is appropriate because the applicant will be conducting the activity with its own resources and that DOE support of that activity would enhance the public benefit to be derived. DOE knows of no other entity which is conducting or planning to conduct such an activity that is specific for the art museum/college building component.

FOR FURTHER INFORMATION CONTACT: Inquiries must be submitted within fourteen (14) calendar days of publication of this notice to: Julie A. Riel, U.S. Department of Energy, Richland Operations Office, Procurement Division, A7–80, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376–9790.

Dated: June 5, 1991.

P.E. Rasmussen,

Acting Director, Procurement Division, Richland Operations Office.

[FR Doc. 91–13974 Filed 6–11–91; 8:45 am]

BILLING CODE 6450–01–M

[Docket Nos. ER91–453–000, et al.]

Federal Energy Regulatory Commission

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 5, 1991.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER91–453–000]

Take notice that on May 23, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Orlando Utilities Commission (Orlando) of up to 100 megawatts of capacity and energy. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Orlando, designated as Tampa Electric Rate Schedule FERC No. 27.

Tampa Electric proposes an effective date of May 21, 1991 for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Orlando and the Florida Public Service Commission.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Co.

Docket No. ES91–33–000]

Take notice that on May 30, 1991, Union Electric Company ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to 204 of the Federal Power Act seeking authorization for the issuance of short-term, unsecured promissory notes in the aggregate amount of not more $600 million, of which not more than $450 million at any one time may be in the form of commercial paper.

Comment date: June 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Oxbow Paper of North Tonawanda, New York, Inc.

[Docket No. QF89–111–001]

On May 28, 1991, Oxbow Power of North Tonawanda, New York, Inc. (Applicant), of 1601 Forum Place, West Palm Beach, Florida 3401 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 55.956 MW topping-cycle cogeneration facility will be located at 1070 Erie Boulevard, in the City of North Tonawanda, New York. The facility will consist of a combustion turbine generator, a heat recovery boiler (HRB) and an extraction/ condensing steam turbine generator. The facility was originally certified by Commission Order issued March 14, 1989, Oxbow Power Corporation, 46 FERC 62,264. The instant recertification is requested due to changes in ownership from Oxbow Power Corporation to Applicant, configuration, primary fuel use from coal to natural gas and installation date from February 1990 to August 1991. In addition, the thermal output of the facility will now be used in an affiliated greenhouse complex for space heating.

Comment date: July 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp Electric Operations

[Docket No. ER91–456–000]

Take notice that PacifiCorp Electric Operations (PacifiCorp), on May 28, 1991 tendered for filing, Fifth Revised Sheet No. 5D superseding Fourth Revised Sheet No. 5D (Index of Purchasers Executing Service Agreements) under PacifiCorp's FERC Electric Tariff, Original Volume No. 3 (Tariff), and Service Agreement under Service Schedule PPL–3 of the Tariff between PacifiCorp and: (1) Turlock Irrigation District (Turlock) dated March 14, 1991, (2) Arizona Power Pooling Association (Arizona) dated April 22, 1991, (3) Utah Associated Municipal Power Systems (UAMPS) dated May 7, 1991 and (4) Utah Municipal Power Agency (UMPA) dated May 7, 1991.

The Service Agreements provide for the sale of non-form power and energy for resale in accordance with Service Schedule PPL–3 of the Tariff. PacifiCorp's filing herein is provided to add Turlock, Arizona, UAMPS and UMPA to the Index of Purchasers Executing Service Agreements under the Tariff.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that effective dates be assigned to the following Service Agreements: January 1, 1991 (Turlock), April 1, 1991 (Arizona), January 1, 1991 (UAMPS) and May 1, 1991 (UMPA). These dates are consistent with the effective dates shown on each of the Service Agreements filed herein. The waiver will have no effect upon purchasers under other rate schedules.

Copies of this filing were supplied to Turlock, Arizona, UAMPS, UMPA, Public Utilities Commission of the State of California, Arizona Corporation Commission and the Utah Public Service Commission.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Co.

[Docket No. ER91–457–000]

Take notice that on May 28, 1991, Central Maine Power Company (CMP), tendered for filing the following power sales agreements and Termination Notices.

1. Agreement between Massachusetts Wholesale Electric Company and CMP effective May 1, 1987; Termination Notice effective October 31, 1987;
2. Agreement between Public Service Company of New Hampshire and CMP effective May 1, 1987; Termination Notice effective October 31, 1988;
3. Agreement between Public Service Company of New Hampshire and CMP effective June 1, 1988; Termination Notice effective October 31, 1988;
4. Agreement between Boston Edison Company and CMP effective August 1, 1988; Termination Notice effective September 30, 1988;

5. Agreement between Public Service Company of New Hampshire and CMP effective October 1, 1988; Termination Notice effective October 31, 1988;

6. Agreement between New England Power Company and CMP effective October 1, 1988; Termination Notice effective October 31, 1988;

7. Agreement between New England Power Company and CMP effective October 1, 1988; Termination Notice effective October 31, 1988;

8. Agreement between Boston Edison Company and CMP effective March 1, 1989; Termination Notice effective October 31, 1989;

9. Agreement between Boston Edison Company and CMP effective May 1, 1989; Termination Notice effective October 31, 1989;

10. Agreement between Public Service Company of New Hampshire and CMP effective November 1, 1989; Termination Notice effective November 31, 1989;

11. Agreement between Boston Edison Company and CMP effective March 10, 1990; Termination Notice effective April 6, 1990;

12. Agreement between Boston Edison Company and CMP effective May 1, 1990; Termination Notice effective October 31, 1990;

13. Agreement between Canal Electric Company and CMP effective May 1, 1990; Termination Notice effective October 31, 1990;

14. Agreement between Public Service Company of New Hampshire and CMP effective May 1, 1990; Termination Notice effective June 30, 1990.

CMP has requested that the Commission waive its notice and filing requirements to permit each of these agreements and notices to become effective in accordance with their terms.

CMP has served copies of the filing on the affected customers and on the Maine Public Utilities Commission.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Co.

[Docket No. FA90–39–001]

Take notice that on May 22, 1991, Montaup Electric Company (Montaup) tendered for filing its refund report in the above-referenced docket.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Philadelphia Electric Co.

[Docket Nos. ER91–366–000, ER91–367–000, ER91–368–000, ER91–376–000]

Take notice that on May 19, 1991, Philadelphia Electric Company submitted an amendment to the supporting material previously submitted in these dockets. The amendment provides answers to questions asked by the Commission's Staff.

Comment date: June 19, 1991 in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas

[Docket No. ER91–455–000]

Take notice that on May 24, 1991, New York State Electric & Gas Corporation (NYSEG) tendered for filing, pursuant to § 35.13 of the regulations under the Federal Power Act, a proposed rate schedule change to the borderline sales agreement between NYSEG and Pennsylvania Electric Company (Penelec) presently designated as Rate Schedule FERC No. 20. The proposed changes would increase NYSEG revenues from borderline sales to Penelec by $131,000 based on the 12 month period ending December 31, 1990. Penelec revenues from borderline sales to NYSEG would increase $11,000 for the same time period.

The proposal sets the rate for energy delivered at an effective, non-jurisdictional tariff rate of the selling company. Additionally, the supplement provides cost recovery for the construction of distribution facilities in accordance with the filed line extension policy of each company.

NYSEG has sent a copy of this filing to Penelec, to the Pennsylvania Public Utility Commission, and to the Public Service Commission of the State of New York.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Power Co.

[Docket No. ER91–454–000]

Take notice that Consumers Power Company (Consumers) on May 24, 1991, tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined from time to time by Consumers. The annual fixed charge factor has been redetermined effective May 1, 1991 using year-end 1990 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were reduced from $18,235.00 to $17,349.00.

Consumers requests an effective date of May 1, 1991, and therefore requests waiver of the Commission's notice requirements.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Co.

[Docket No. ER91–389–000]

Take notice that on May 28, 1991, The Washington Water Power Company, tendered for filing Amendment 1 to its original filing of a Firm Capacity and Energy Sales Agreement between the Washington Water Power Company and Sierra Pacific Power Company. This Amendment 1 provides additional information requested by Commission staff.

A copy of the filing was served upon Sierra Pacific Power Company.

Comment date: June 19, 1991, in accordance with Standard Paragraph E end of this notice.

11. PacifiCorp Electric Operations

[Docket No. ER91–471–000]

Take notice that PacifiCorp Electric Operations (PacifiCorp), on June 3, 1991, tendered for filing pursuant to sections 205 and 206 of the Federal Power Act and in accordance with § 35.13 of the Commission's Regulations, respectively proposed revised rates under PacifiCorp's FERC Electric Tariff, Original Volume No. 4, Service Schedules PPL–4; PacifiCorp's FERC Electric Tariff, Original Volume No. 5, Service Schedules TS–1 and TS–2; PacifiCorp's FERC Electric Tariff, Original Volume No. 6, Service Schedules RS–HV and RS–LV; and PacifiCorp's Rate Schedule Nos. 262, 280, 297 and 305. PacifiCorp's filing herein is being submitted in compliance with the Commission's Opinion Nos. 318 and 318A under Docket Nos. EC88–2–000 and EC88–2–003.

PacifiCorp requests waiver of the Commission's notice requirements, and that the filing be made effective on June 1, 1991, as provided in Opinion Nos. 318 and 318A for all services subject to section 205 of the Federal Power Act.

PacifiCorp requests that the Commission establish an effective date for all services subject to section 206 of the Federal Power Act.

Copies of the filing were served upon all parties hereto, the Wyoming Public Service Commission, the Utah Public Service Commission, the Public Utility Commission of Oregon, the Idaho Public Utilities Commission, the Colorado Public Utilities Commission, the Montana Public Service Commission, the California Public Utility Commission, the Nevada Public Service Commission and the Arizona Public Service Commission.

Comment date: June 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER91–458–000]

Take notice that New York State Electric & Gas Corporation (NYSEG), on May 28, 1991, tendered for filing Supplement No. 6 to its Agreement with Consolidated Edison Company of New York, Inc. (Con. Edison), designated Rate Schedule FERC No. 87. The proposed changes would decrease revenues by $13,213 based on the twelve month period ending March 31, 1992.

This rate filing, Supplement No. 6, is made pursuant to sections 1 (e) and (f) and 2 (e), (f) and (g) of article III of the August 23, 1983 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken fry NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC No. Form 1) for the twelve months ended December 31, 1990. In addition, Con Edison's pro rata share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The levelized annual carrying charges included in the calculation reflect a 11.70 percent return on equity which was approved by the New York State Public Service Commission's Opinion 91–1 in Cases 90–E–0138, 90–E–0139 and 90–G–0140, effective February 1, 1991.

NYSEG requests an effective date of April 1, 1991, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Co.

[Docket No. ER91–459–000]

Take notice that on May 24, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing changes to Rate Schedule FERC No. 84. This Rate Schedule pertains to services that are rendered by PG&E under the agreement entitled the "Interconnection Agreement between PG&E and Northern California Power Agency, City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah, and Plumas Sierra Rural Electric Cooperative" (Interconnection Agreement).

This filing tendered a revised exhibit A–4 to the Interconnection Agreement. The proposed exhibit A–4 adds Midway Substation as a point of receipt and delivery point to accommodate transmission service associated with the Transmission Agency of Northern California Transmission Rate Schedule (TANC TRS) filed by PG&E in FERC Docket No. ER91–344–000.

Copies of this filing were served upon NCPA and the California Public Utilities Commission.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Co.

[Docket No. ER91–460–000]

Take notice that on May 29, 1991, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Two to Short Term Agreement to Provide Power and Energy by Florida Power & Light Company to Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna).

FPL states that Amendment Number Two revises the capacity commitment by FPL to New Smyrna.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and the proposed Amendment Number Two be made effective June 1, 1991. FPL states that a copy of the filing was served on New Smyrna and the Florida Public Service Commission.

Comment date: June 19, 1991 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to interven or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13691 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–2114–000, et al.]

Great Lakes Gas Transmission Limited Partnership, et al.; Natural Gas Certificate Filings

June 5, 1991.

Take notice that the following filings have been made with the Commission.

1. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91–2114–000]

Take notice that on May 24, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed in Docket No. CP91–2114–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the interruptible transportation service performed by Great Lakes for Michigan Consolidated Gas Company (MichCon) pursuant to Great Lakes' FERC Gas Tariff, Original Volume No. 2, Rate Schedule T–14, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Great Lakes states that it provides an interruptible transportation service of up to 400 Mcf per day of natural gas for MichCon pursuant to a Transportation Service Agreement between Great Lakes and MichCon dated July 8, 1985, which is on file with the Commission as Great Lakes' Rate Schedule T–14. Great Lakes also states that it transports the natural gas for MichCon from a point of interconnection located in Summerfield Township, Clare County, Michigan (Summerfield Receipt Point) to another point of interconnection located at Belle River Mills, Michigan (Belle River Mills Delivery Point).

Great Lakes further states that under its open-access certificate in Docket No. CP89–2198–000, Great Lakes and MichCon entered into a Service Agreement dated October 23, 1990, which provides for interruptible transportation for MichCon from the Summerfield Receipt Point to the Belle River Mills Delivery Point. MichCon advised Great Lakes that because the Service Agreement provides MichCon with more flexibility than is provided under Rate Schedule T–14, the T–14 agreement is no longer needed.

Therefore, Great Lakes and MichCon have entered into a letter agreement dated March 27, 1991 which terminates the T-14 agreement.

Comment date: June 26, 1991, in accordance with Standard Paragraph F at the end of this notice.

Columbia Gulf Transmission Co.

2. ANR Pipeline Company

South Georgia Natural Gas Co.

[Docket Nos. CP91-2154-000, CP91-2156-000, CP91-2157-000]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

APPENDIX A—PAGE 1 OF 1

Docket Number (date filed)	Shipper name (type)	Peak day, average day, annual [2]	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up
CP91-2154-000 (5-31-91)	CNG Trading Co. (Marketer).	10,000 5,000 1,825,000	LA, OLA	LA	10-25-88, ITS-2, Interruptible.	ST91-8613, 3-23-91.
CP91-2156-000 (5-31-91)	Dekalb Energy Canada Ltd. (Marketer).	30,000 30,000 10,950,000	LA, OK, KS, TX	Various	10-1-90, ITS, Interruptible.	ST91-8283, 4-4-91.
CP91-2157-000 (5-31-91)	City of Sylvester, Ga. (Municipality).	379 379 138,335	AL	GA	5-2-90, FT, Firm	ST91-8243, 4-2-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Columbia Gulf's volumes are in MMBtu, ANR's volumes are in Dth, and South Georgia's volumes are in Mcf.

APPENDIX B

Applicant's address	Blanket docket
ANR Pipeline Co., 500 Renaissance Center, Detroit, Michigan 48243	CP88-532-000.
Columbia Gulf Transmission Co., 3805 West Alabama, Houston, Texas 77027	CP86-239-000.
South Georgia Natural Gas Co., Post Office Box 2563, Birmingham, Alabama 35202-2563	CP90-2125-000.

3. Tennessee Gas Pipeline Co.

[Docket Nos. CP91-2170-000, CP91-2171-000]

Take notice that on June 4, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Tennessee and is summarized in the attached appendix.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2170-000 (6-4-91)	DeSoto Pipeline Company, Inc. (Intrastate Pipeline).	4,000 4,000 1,460,000	OLA, LA, TX	TX	4-19-91 [2] IT, Interruptible.	ST91-8811-000 5-1-91.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2171-000 (6-4-91)	North Canadian Marketing Corporation (Marketer).	200,000 200,000 73,000,000	TN	PA	4-19-91, IT, Interruptible.	ST91-8715-000 4-20-91.

[1] Offshore Louisiana is shown as OLA.
[2] As amended.

4. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-2143-000, CP91-2144-000, CP91-2145-000, CP91-2146-000, CP91-2145-000]

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transportation including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-2143-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Two Rivers Oil & Gas Company, Inc.	150 150 54,750	KS, CO, IL, MI, OH, OK, TX, WY.	IL	4-1-91, PT-I	CP86-585-000, ST91-8543-000.
CP91-2144-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Associated Natural Gas, Inc.	20,000 20,000 7,300,000	KS, CO, IL, MI, OH, OK, TX.	OH	4-1-91, PT-I	CP86-585-000, ST91-8545-000.
CP91-2145-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Bishop Pipeline Corporation.	20,000 20,000 7,300,000	CO, IL, KS, OK, MI, OH, TX.	IN	4-1-91, PT-I	CP86-585-000, ST91-8338-000.
CP91-2146-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amoco Energy Trading Corporation.	75,000 75,000 27,375,000	OK, CO, IL, KS, TX...	KS	4-5-91, PT-I	CP86-585-000, ST91-8336-000.
CP91-2147-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Bishop Pipeline Corporation.	10,000 10,000 3,650,000	OK, CO, IL, KS, MI, OH, TX.	KS	4-1-91, PT-I	CP86-585-000, ST91-8344-000.

[1] Quantities are shown in Dt. Unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-2148-000, CP91-2149-000, CP91-2150-000, CP91-2151-000, CP91-2152-000, CP91-2153-000]

Take notice that on May 31, 1991, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day

[4] These prior notice requests are not consolidated.

and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket No.[3] (date filed)	Shipper name	Peak day,[1] avg. annual	Points of [2]		Start up date, rate schedule, Service type	Related docket, contract date
			Receipt	Delivery		
CP91-2148-000 (5-31-91)	Mountain Iron & Supply Co.	10,000 10,000 3,650,000	CO, IL, KS, MI, OH, OK, TX.	KS	4-16-91, PT, Interruptible.	ST91-8542-000, 4-3-91.
CP91-2149-000 (5-31-91)	Amgas, Inc	200 100 36,500	CO, IL, KS, MI, OH, OK, TX, WY.	IL	4-1-91, PT, Interruptible.	ST91-8341-000, 2-19-91.
CP91-2150-000 (5-31-91)	Amgas, Inc	150 75 27,375	CO, IL, KS, MI, OH, OK, TX, WY.	IL	4-8-91, PT, Interruptible.	ST91-8342-000, 4-4-91.
CP91-2151-000 (5-31-91)	Aquila Energy Marketing Corp.	100,000 100,000 36,500,000	CO, IL, KS, MI, OH, OK, TX,.	KS	4-1-91, PT, Interruptible.	ST91-8544-000, 3-22-91.
CP91-2152-000 (5-31-91)	A.P. Green Industries, Inc.	4,188 4,188 1,528,620	CO, IL, KS, MI, OH, OK, TX, WY.	MO	4-1-91, PT, Interruptible.	ST91-8344-000, 1-3-90.
CP91-2153-000 (5-31-91)	Amgas, Inc	90 45 16,425	CO, IL, KS, MI, OH, OK, TX, WY.	IL	4-1-91, PT, Interruptible.	ST91-8345-000, 2-19-91.

[1] Quantities are shown in dekatherms.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

6. Southern Natural Gas Co. Southern Natural Gas Co. ANR Pipeline Co.

[Docket Nos. CP91-2158-000, CP91-2159-000, CP91-2161-000]

Take notice that Southern Natural Gas Coompany, P.O. Box 2563, Birmingham, Alabama 35202-2563, and ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-316-000 and Docket No. CP88-532-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day, annual MMBtu	Receipt Points [1]	Delivery Points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2158-000 (5-31-91)	Southeastern Gas Gathering Ltd. (Marketer).	100,000 25,000 9,125,000	OTX, OLA, TX, LA, MS, AL.	GA, SC, TN	3-4-91, IT, Interruptible.	ST91-8244-000, 3-31-91.
CP91-2159-000 (5-31-91)	City of Sylvester, Georgia (LDC).	381Mcf 381Mcf 139,065Mcf	OTX, OLA, TX, LA, MS, AL.	AL	4-2-91, FT, Firm	ST91-8594-000, 4-2-91.
CP91-2161-000 (5-31-91)	Vesta Energy Company (Marketer).	10,000Dth 10,000Dth 3,650,000Dth	OTX, OLA, LA, OK, KS, TX.	MO	3-6-91, ITS, Interruptible.	ST91-8282-000, 4-6-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

7. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-2138-000]

Take notice that the above referenced company (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests

which are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicants also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

APPENDIX—PAGE 1 OF 2

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] average, annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-2138-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc	50 25 9,125	KS, CO, IL, OK, MI, OH, TX, WY.	IL	PT Interruptible, 4-1-91.	CP86-585-000 ST91-8343-000
CP91-2139-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc	26 13 4,745	KS, CO, IL, OK, MI, OH, TX, WY.	IL	PT Interruptible, 4-8-91.	CP86-585-000 ST91-8340-000
CP91-2140-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Clinton Gas Transmission Inc.	50,000 50,000 18,250,000	IL, CO, KS, OK, MI, OH, TX.	IN	PT Interruptible, 4-1-91.	CP86-585-000 ST91-8423-000
CP91-2141-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc	22 7 2,555	KS, CO, IL, KS, OK, MI, OH, TX, WY.	IL	PT Interruptible, 4-1-91.	CP86-585-000 ST91-8339-000
CP91-2142-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc	70 35 12,775	CO, IL, KS, OK, MI, OH, TX, WY.	IL	PT Interruptible, 4-1-91.	CP86-585-000 ST91-8337-000

[1] Quantities are shown in Dt. unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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 filing 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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 date 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. 91–13892 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–65–000]

Arkla Energy Resources, a division of Arkla, Inc.; Informal Settlement Conference

June 6, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, June 18, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact William J. Collins (202) 208–0248 or Marsha L. Gransee (202) 208–0783.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13893 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–168–000]

Bayou Interstate Pipeline System; Petition for Waiver and Extension of Time

June 6, 1991.

Take notice that on May 30, 1991, Bayou Interstate Pipeline System (Bayou) filed a petition for waiver of § 154.305(e) of the Commission's Regulations that require filing an Annual PGA filing 60 days before a pipeline's proposed annual PGA effective date, as established under § 154.304(c). Bayou requests an extension of time for such filing.

Bayou states that the waiver and request for extension of time is being sought due to a pending abandonment application in Docket No. CP90–2282–000 wherein Bayou is seeking abandonment authority for its certificated facilities. Bayou states that upon receiving such authority it will commence to wind up all of its activities and cease to be a "natural gas company" as defined in Natural Gas Act.

Bayou states that a copy of the filing has been mailed to Bayou's jurisdictional customer and interested state regulatory agencies.

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 June 13, 1991. 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. 91–13894 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–108–010]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 23, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1:

To be Effective November 1, 1990

Second Substitute Second Revised Sheet No. 40
Second Substitute Second Revised Sheet No. 41
Second Substitute Second Revised Sheet No. 45
Second Substitute Second Revised Sheet No. 61
Second Substitute Second Revised Sheet No. 65

To Be Effective November 3, 1990

Substitute Third Revised Sheet No. 41
Substitute Third Revised Sheet No. 61

Columbia states that the tariff sheets are being refiled for the sole purpose of correcting clerical errors to certain tariff sheet language that had already been accepted for filing but which was not incorporated in the filed tariff sheets.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions, and upon each person designated on the official service lists compiled by the commission's Secretary in Docket Nos. RP90–108, MT89–3–004 and MG89–11–001.

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 rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 13, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13895 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–4–2–000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 6, 1991.

Take notice that on June 3, 1991, East Tennessee Natural Gas Company (East Tennessee) filed Third Revised Sheet No. 6 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective July 4, 1991.

East Tennessee states that the purpose of Third Revised Sheet No. 6 is to reflect the allocation to East Tennessee of an additional $65,873 in new transition demand costs allocated to East Tennessee by Tennessee Gas Pipeline Company in its May 31, 1991 filing in Docket No. RP91–29. East Tennessee is flowing these charges through to its customers pursuant to article 26 of its FERC Gas Tariff.

East Tennessee requests waiver of § 26.4 of the General Terms and Conditions of its FERC Gas Tariff to the extent necessary for acceptance of the instant filing on July 4, 1991, as proposed.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or

before June 13, 1991. 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; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13896 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–4–7–000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

June 6, 1991.

Take notice that on June 3, 1991, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Eighth Revised Sheet No. 4B.1
Eighth Revised Sheet No. 4B.2
Eighth Revised Sheet No. 4B.3

Southern states that the above-referenced tariff sheets are being filed with a proposed effective date of July 1, 1991 and are filed solely to reflect the elimination from Southern's take-or-pay recovery of approximately $1.9 million of buy-out and buy-down costs allocated to Southern by Sea Robin Pipeline Company which were included in Southern's original July 30, 1990 tariff filing in this proceeding and protested by Atlanta Gas Light Company and Chattanooga Gas Company (Atlanta). This elimination has been made by Southern in order to resolve the disagreement with Atlanta over the appropriate amount of directly incurred Sea Robin costs which could be flowed through by Southern and will render any further Commission consideration of the protest filed by Atlanta unnecessary.

Southern states that copies have been served upon Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before June 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13897 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–7–17–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 31, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fifteenth Revised Sheet No. 76
Fourteenth Revised Sheet No. 77
Thirteenth Revised Sheet No. 78
Fourteenth Revised Sheet No. 79
Third Revised Sheet No. 483C
Third Revised Sheet No. 483D
First Revised Sheet No. 483D.1

Texas Eastern states that these tariff sheets are being filed to establish the procedures by which Texas Eastern will recover the take-or-pay charges billed to Texas Eastern by Texas Gas Transmission Corporation pursuant to Texas Gas Transmission Corporation's Docket No. RP91–134–000.

The proposed effective date of the tariff sheets listed above is July 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in Docket Nos. RP91–72, *et al.*

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 June 13, 1991. 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. 91–13898 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–68–034]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

June 6, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on May 24, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Interest Rate True-Up of PSP and LPSP Charges, made pursuant to sections 29 and 32 through 37 of the General Terms and Conditions of Transco's FERC Gas Tariff, Second Revised Volume No. 1.

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 rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before June 13, 1991. 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. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13899 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–49–000 and RP91–169–000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing

June 6, 1991.

Take notice that on May 31, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Roser Avenue, Bismarck, North Dakota 58501, tendered for filing its Annual Purchased Gas Cost Adjustment Filing (PGA) pursuant to 18 CFR 154.301, *et seq.* of the Commission's Regulations and section 21 of its FERC Gas Tariff (First Revised Volume No. 1).

The proposed effective date of the tariff sheets is August 1, 1991.

Williston Basin states that Second Revised Thirty-fourth Revised Sheet No. 10 (First Revised Volume No. 1) and Second Revised Thirty-fifth Revised Sheet No. 10 (original Volume No. 2) reflect a 4.449 cents per dkt Current Gas Cost Adjustment applicable to Rate Schedules G–1, SGS–1, E–1 and X–1 and a 3.700 cents per dkt Surcharge Adjustment applicable to Rate Schedules G–1 and SGS–1. These changes result in an overall 8.293 cents per dkt increase in the Cumulative Adjustment applicable to Rate Schedules G–1 and SGS–1, as compared to that contained in the Company's April 22, 1991 PGA filing in Docket Nos. TQ90–4–49–000, RP90–113–000 and TQ91–3–49–000 which was to be effective May 1, 1991.

Williston Basin also submits for filing Second Revised Twenty-seventh Revised Sheet No. 11, Second Revised Thirty-third Revised Sheet No. 12 and First Revised Sixteenth Revised Sheet No. 97A (Original Volume No. 1–A), Second Revised Twenty-second Revised Sheet Nos. 10 and 11 (Original Volume No. 1–B), and Second Revised Thirty-fifth Revised Sheet No. 10 and Second Revised Twenty-eighth Revised Sheet No. 11B (Original Volume No. 2) which are affected by the instant change in the average cost of purchased gas. Specifically, the referenced tariff sheets reflect a 0.363 cents per dkt decrease in the fuel reimbursement charge component of the Company's relevant transportation rates as comapred to that contained in the Company's April 22, 1991 filing in Docket Nos. TQ90–4–49–000, RP90–113–000 and TQ91–3–49–000 which was to be effective May 1, 1991.

Also, as referenced in Second Revised Twenty-seventh Revised Sheet No. 11 and Second Revised Thirty-third Revised Sheet No. 12 (Original Volume No. 1–A) and Second Revised Thirty-fifth Revised Sheet No. 10 (Original Volume No. 2), Williston Basin has revised the fuel reimbursement percentage applicable to certain transportation rate schedules to 2.521%, to be effective August 1, 1991.

Consistent with the Company's filing of two sets of tariff sheets (Primary and Alternate) in its Annual Take-or-Pay Reconciliation Filing submitted the same date in Docket No. TM91–3–49–000, to be effective July 1, 1991, the instant filing also contains Alternate tariff sheets. Williston basin requests that the Commission accept the Alternate tariff sheets only in the event that the Commission makes the Company's April 30, 1991 Section 4 rate filing in Docket No. RP91–141–000 effective prior to August 1, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 26, 1991. 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 to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13900 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3964–4]

Office of Research and Development

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another reference method for the measurement of ambient concentrations of nitrogen dioxide. The new reference method is an automated method (analyzer) which utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50. The new designated method is identified as follows:

RFNA–0691–082, "Advanced Pollution Instrumentation, Inc. Model 200 Nitrogen Oxides Analyzer," operated on a range of either 0–0.05 ppm or 0–1.0 ppm, with a 5-micron TFE filter element installed in the rear-panel filter assembly, with either a user- or vendor-supplied vaccum pump capable of providing 5 inches mercury absolute pressure at 5 slpm, with either a user- or vendor-supplied dry air source capable of providing air at a dew point of 00 C or lower, with the following settings of the adjustable setup variables:

Dynamic Span	OFF
Dynamic Zero	OFF
Dwell Time	7 seconds
Sample Time	8 seconds
Reaction Cell Temperature.	500 C
PMT Temperature Set Point.	150 C
Normal Filter Size	12 samples
Rate of Change (ROC) Threshold.	10%
Adaptive Filer	ON,

and with or without any of the following options:

180 Stainless Steel Valves
184 Stainless Steel Valves
280 Rack Mount With Slides
283 Internal Zero/Span With Valves (IZS)
325 RS–232/Status Output
355 Expendables
356 Level One Spares Kit
357 Level Two Spares Kit
PE5 Permeation Tube for IZS.

This method is available from Advanced Pollution Instrumentation Inc., 8815 Production Avenue, San Diego, California 92121–2219. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 56, April 2, 1991, page 13472.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., dwell time) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor

modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designation status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the states in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91–13956 Filed 6–11–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50728; FRL–3928–6]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the U.S. Department of Agriculture, Agricultural Research Service, a notification of intent to conduct small-scale field testing of an isolate of *Puccinia carduorum* from Turkey for the control of musk thistle in the States of California and Maryland.

DATES: Written comments must be received on or before June 26, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM–21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), dated April 18, 1991, has been received from the U.S. Department of Agriculture, Agricultural Research Service, of Frederick, Maryland. The purpose of the proposed testing is to evaluate the efficacy of Turkish isolate of *Puccinia carduorum* as a mycoherbicide for the control of musk thistle, which primarily infests range and pasture lands. The proposed field tests would be conducted in the States of California and Maryland. The total area of the proposed test sites would be less than 10 acres.

Dated: May 28, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–13532 Filed 6–11–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30314; FRL–3876–8]

Pesticide Reregistration Eligibility Document; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Final Reregistration Eligibility Document; Opening of Public Comment Period.

SUMMARY: This notice announces the availability of the final Reregistration Eligibility Document (RED) for fosetyl-Al and the establishment of a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical and

presents the Agency's determination regarding which uses of fosetyl-Al are eligible for reregistration.

DATES: Written comments on the fosetyl-Al RED must be submitted by August 12, 1991.

ADDRESSES: Three copies of comments, identified with the docket number (OPP-30314), should be submitted to: By mail: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions about the RED should be directed to Ms. Judith Coombs at 703-308-8173. To request a copy of the Reregistration Eligibility Document or a RED Fact Sheet for fosetyl-Al, contact the Public Information Branch, in rm. 246 at the address given above (703-557-2805). Requests should be submitted in time to allow sufficient time for receipt before the close of the comment period.

SUPPLEMENTARY INFORMATION: The Agency has issued a final Reregistration Eligibility Document for fosetyl-Al. This RED, and one for *Heliothis zea* (NPV), notice of which is being issued elsewhere in this issue of the **Federal Register**, are the first two RED's completed by the Agency. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards.

Fosetyl-Al has a complete data base, and the Agency has determined that the registered uses do not cause unreasonable adverse effects to people or the environment. All registered uses of fosetyl-Al are eligible for reregistration. All registrants of fosetyl-Al have been sent the RED and must respond to the labeling requirements within 8 months of receipt. No additional data are being required. The 60-day public comment period does not affect the registrant's response due date.

The Agency's rationale for issuing the fosetyl-Al RED as a final document with a 60-day comment period is based on the Agency's experience with Registration Standards and comments received from the public at a reregistration workshop sponsored by the Agency in September 1990. Public comments on Registration Standards were very limited. Most comments were from affected registrants and involved clarification of data requirements and/or questions about the appropriateness of certain data and or labeling changes. The Agency believes registrants will have ample opportunity to raise issues with the Agency prior to the due date of their response or in the response itself. Most of the participants at the September 1990 workshop, which included several hundred registrants, State and federal agency representatives, and public interest groups, expressed a desire to have an opportunity to comment on a draft RED prior to the Agency issuing the document in final. Although the Agency is issuing the fosetyl-Al RED in final, it believes that the establishment of a 60-day comment period will provide sufficient opportunity for public input and allow a mechanism for any subsequent necessary amendments to the RED. The Agency believes this approach is necessary in order to reduce the time required to complete the assessment and issue RED's for all affected pesticides and meet the Congressionally mandated timeframes for completion of the reregistration task.

Authority: 7 U.S.C. 136.

Dated: June 1, 1991.

Allan S. Abramson,

Acting Division Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-13957 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30313; FRL-3876-7]

Pesticide Reregistration Eligibility Document; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Final Reregistration Eligibility Document; Opening of Public Comment Period.

SUMMARY: This notice announces the availability of the final Reregistration Eligibility Document (RED) for *Heliothis zea* (NPV) and the establishment of a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's determination regarding which uses of *Heliothis zea* (NPV) are eligible for reregistration.

DATES: Written comments on the *Heliothis zea* (NPV) RED must be submitted by August 12, 1991.

ADDRESSES: Three copies of comments, identified with the docket number (OPP-30313), should be submitted to: By mail: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions about the RED should be directed to Ms. Brigid Lowery at 703-308-8053. To request a copy of the Reregistration Eligibility Document or a RED Fact Sheet for *Heliothis zea* (NPV), contact the Public Information Branch, in rm. 246 at the address given above (703-557-2805). Requests should be submitted in time to allow sufficient time for receipt before the close of the comment period.

SUPPLEMENTARY INFORMATION: The Agency has issued a final Reregistration Eligibility Document for *Heliothis zea* (NPV). This RED, and one for fosetyl-Al, notice of which is being issued elsewhere in this issue of the **Federal Register**, are the first two RED's completed by the Agency. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an

accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards.

Heliothis zea (NPV) has a complete data base, and the Agency has determined that the registered uses do not cause unreasonable adverse effects to people or the environment. All registered uses of *Heliothis zea* (NPV) are eligible for reregistration. All registrants of *Heliothis zea* (NPV) have been sent the RED and must respond to the labeling requirements within 8 months of receipt. No additional data are being required. The 60-day public comment period does not affect the registrant's response due date.

The Agency's rationale for issuing the *Heliothis zea* (NPV) RED as a final document with a 60-day comment period is based on the Agency's experience with Registration Standards and comments received from the public at a reregistration workshop sponsored by the Agency in September 1990. Public comments on Registration Standards were very limited. Most comments were from effected registrants and involved clarification of data requirements and/or questions about the appropriateness of certain data and or labeling changes. The Agency believes registrants will have ample opportunity to raise issues with the Agency prior to the due date of their response or in the response itself. Most of the participants at the September 1990 workshop, which included several hundred registrants, State and federal agency representatives, and public interest groups, expressed a desire to have an opportunity to comment on a draft RED prior to the Agency issuing the document in final. Although the Agency is issuing the *Heliothis zea* (NPV) RED in final, it believes that the establishment of a 60-day comment period will provide sufficient opportunity for public input and allow a mechanism for any subsequent necessary amendments to the RED. The Agency believes this approach is necessary in order to reduce the time required to complete the assessment and issue RED's for all affected pesticides and meet the Congressionally mandated timeframes for completion of the reregistration task.

Authority: 7 U.S.C. 136.

Dated: June 1, 1991.

Allan S. Abramson,

Acting Division Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-13958 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-34014; FRL 3925-4]

Pesticide Reregistration Eligibility Document for Methoprene; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for comment.

SUMMARY: This notice announces the availability of the final Reregistration Eligibility Document (RED) for methoprene and the establishment of a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's determination regarding which uses of methoprene are eligible for reregistration.

DATES: Written comments on the methoprene RED must be submitted by August 12, 1991.

ADDRESSES: Three copies of comments identified with the docket number "OPP-34014" should be submitted to: By mail: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Karen Samek at 703-308-8051.

SUPPLEMENTARY INFORMATION: The Agency has issued a final Reregistration Eligibility Document for methoprene. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of methoprene is substantially complete and is sufficient to allow the Agency to conduct a reasonable risk assessment for most registered uses of methoprene. However, two generic data requirements are being levied: Octanol/water partition coefficient and an estuarine invertebrate life cycle study. Although the former study is not critical to the reregistration decision or environmental assessment of methoprene at this time, the Agency is requiring these data to satisfy this gap in the product chemistry data base for methoprene. The latter study is needed to assess the long term exposure to estuarine invertebrates. Although there is concern for the long term exposure to estuarine invertebrates, the Agency has determined that the reregistration of methoprene can proceed at this time because most of the uses for methoprene do not involve significant exposure to estuarine invertebrates. Only the use as a briquette (slow release) formulation raises a concern. The other aquatic formulations are not expected to result in significant exposure because methoprene is short lived in the aquatic environment and does not have a high potential for bioaccumulation. The estuarine invertebrate life cycle study is required to confirm whether or not the estimated exposure from the briquette formulation is sufficient to pose an adverse effect on estuarine invertebrates. EPA has determined that all products containing methoprene as an active ingredient are eligible for reregistration except the briquette formulation which will be considered for reregistration once the data requested are submitted, reviewed, and determined to cause no unreasonable risk to nontarget organisms, specifically estuarine invertebrates.

All registrants of methoprene have been sent the RED and must respond to the product specific data and labeling requirements within 8 months of receipt. The 60-day public comment period does not affect the registrant's response due date.

The Agency's rationale for issuing the methoprene RED as a final document with a 60-day comment period is based on the Agency's experience with Registration Standards and comments received from the public at a reregistration workshop sponsored by the Agency in September 1990. Public comments on Registration Standards were very limited. Most comments were from effected registrants and involved clarification of data requirements and/or questions about the appropriateness of certain data and or labeling changes. The Agency believes registrants will

have ample opportunity to raise issues with the Agency prior to the due date of their response or in the response itself. Most of the participants at the September 1990 workshop, which included several hundred registrants, State and Federal agency representatives and public interest groups, expressed a desire to have an opportunity to comment on a draft RED prior to the Agency issuing the final document. Although the Agency is issuing the final methoprene RED, it believes that the establishment of a 60-day comment period will provide sufficient opportunity for public input and allow a mechanism for any subsequent necessary amendments to the RED. The Agency believes this approach is necessary in order to reduce the time required to complete the assessment and issue RED's for all affected pesticides and meet the Congressionally mandated time frames for completion of the reregistration task.

The docket number for methoprene is "OPP-34014". Technical questions concerning the RED should be directed to Ms.Karen Samek at the phone number listed under **FOR FURTHER INFORMATION CONTACT.** To request a copy of the Reregistration Eligibility Document or a RED Fact Sheet for methoprene, contact the Public Information Branch, in rm 246 at the address given above (703-557-2805). Requests should be submitted in time to allow sufficient time for receipt before the close of the comment period.

Dated: June 1, 1991.

Allan S. Abramson,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-13959 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

Public Water System Supervision Program Revision for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Public notice is hereby given in accordance with the provisions of section 1213 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of West Virginia has revised its approved Public Water System Supervision (PWSS) Primacy Program. West Virginia has developed: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690); and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). Edwin B. Erickson, Regional Administrator for EPA Region III, has determined that these State program revisions are no less stringent than the corresponding federal regulations and has approved these State program revisions. This determination shall become effective on July 12, 1991, and was based upon a thorough evaluation of West Virginia's PWSS program which has met the requirements stated in 40 CFR 142.10.

West Virginia's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before July 12, 1991. If a public hearing is requested and granted, this determinatioin shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Edwin B. Erickson, Regional Administrator, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadephia, PA 19107.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing, (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing, and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time schedule for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of West Virginia. A notice will also be sent to the person(s) requesting the hearing as well as to the State of West Virginia. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administator does not elect to hold a hearing on his own motion, this determination shall become effective on July 12, 1991.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the office of the Regional Administrator and at the following location in West Virginia: Office of Environmental Health Services, Department of Health and Human Resources, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305.

FOR FURTHER INFORMATION CONTACT: Dave Seter, EPA Region III, Drinking Water Section (3WM41) at the Philadelphia address given above, telephone (215) 597-9111, (FTS) 597-9111.

Edwin B. Erickson,

Regional Administrator EPA, Region III.

[FR Doc. 91-13960 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-909-DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA-909-DR), dated May 30, 1991, and related determinations.

DATED: June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective May 25, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–13939 Filed 6–11–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–904–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–904–DR), dated May 3, 1991, and related determinations.

DATED: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to add Public Assistance and include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991: Jackson Parish for Individual Assistance and Public Assistance; and the parishes of Claiborne, Lincoln, Morehouse, Quachita, Richland, Union, and Webster for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–13940 Filed 6–11–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–906–DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–DR), dated May 17, 1991, and related determinations.

DATED: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

The counties of Alcorn, Calhoun, Clay, Itawamba, Lee, Lowndes, Marshall, Monroe, Tishomingo, and Webster for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–13941 Filed 6–11–91; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE MANAGEMENT AGENCY

State and Local Programs and Support, Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: July 22–23, 1991.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time: July 22—8:30 a.m. to 5 p.m.; July 23—8:30 a.m. to 5 p.m.;

Proposed Agenda: The Board will meet with the National Fire Academy Board of Visitors on the morning of July 22 in the first joint session of the two Boards to discuss areas of mutual interest betwen the two schools. The remainder of the day will consist of break-out sessions with the three subcommittees established from among the Board members, and an informal evening session with the Board and students from each EMI class in session. The Board will meet at FEMA Headquarters on July 23 with staff from each of the FEMA Program Offices that EMI supports which will serve as a valuable opportunity for information exchange between these two groups.

The meeting will be open to the public with approximate 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301–447–1251) on or before July 12, 1991.

Minutes of the meeting will be prepared and will be available for public viewing in the Superintendent's Office, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: May 17, 1991.

Grant C. Peterson,

Associate Director.

[FR Doc. 91–13943 Filed 6–11–91; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review; Correction

June 6, 1991.

This notice corrects a previous **Federal Register** document (FR Doc. No. 91–12871 Filed 5–30–91; 8:45 a.m.), published at page 24818 of the issue for Friday, May 31, 1991, (Vol. 56, No. 105). In the table in column one, the estimated hours per response for the FR 2950/2951 should read ".2 to 5 (1.00 avg.)." In addition, in the second column, the first full sentence should read "The Federal Reserve System proposes to consolidate several items now reported in the FR 2900 as separate items, largely in response to the reduction to zero of the reserve requirement on nonpersonal item deposits that became effective in December 1990, but also because of developments in deposit markets that have reduced the value of certain items."

Board of Governors of the Federal Reserve System, June 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–13911 Filed 6–11–91; 8:45 am]

BILLING CODE 6210–01–M

Frank Santo Cannova; Change in Bank Control Notice;Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 1, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Frank Santo Cannova, St. Petersburg, Florida; to acquire 52.72 percent of the voting shares of Bank of St. Petersburg, St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, June 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13919 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

First Arkansas Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Arkansas Bancshares, Inc., Jacksonville, Arkansas; to engage *de novo* through its subsidiary First Arkansas Appraisal Services, Inc., Jacksonville, Arkansas, in commercial and residential real estate appraisals for the purpose of assisting area residents and lending institutions determine the value of real estate pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13918 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

Stearns Financial Services, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Stearns Financial Services, Inc., Albany, Minnesota; to acquire 100 percent of the voting shares of National Bank of Canby, Canby, Minnesota.

In connection with this application, Applicant also proposes to acquire Howard W. Reiter Company, Canby, Minnesota, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13920 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

Wiregrass Bancorporation, 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 July 1, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Wiregrass Bancorporation, Ashford, Alabama; to acquire 100 percent of the voting shares of Barbour County Bank, Clayton, Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Bancshares, Inc., Schaumburg, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Schaumburg, Schaumburg, Illinois.

2. San Jose Banco, Inc., Fremont, Indiana; to acquire 80 percent of the voting shares of The First National Bank of Fremont, Fremont, Indiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First National Security Company, DeQueen, Arkansas; to acquire at least 97.9 percent of the voting shares of Rodgers Family Bancshares, Inc., Waldron, Arkansas, and thereby indirectly acquire Bank of Waldron, Waldron, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bancorp., Inc., Huron, South Dakota; to merge with First Western Bancorp, Inc., Huron, South Dakota, and thereby indirectly acquire First National Bank of Atkinson, Atkinson, Nebraska.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Western Banshares, Inc., Alliance, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Western Bank, N.A., Alliance, Nebraska, a *de novo* bank.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. Security Pacific Corporation, Los Angeles, California, and Security Pacific Bancorporation Northwest, Seattle, Washington; to retain 100 percent of the voting shares of Security Pacific Bank Idaho, National Association, Coeur d'Alene, Idaho, after its conversion from a savings bank to a SAIF-insured national bank.

Board of Governors of the Federal Reserve System, June 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13921 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 124]

The Prevention of HIV in Women and Infants Demonstration Projects

Introduction

The Centers for Disease Control (CDC), the nation's prevention agency, announces the availability of Fiscal Year 1991 funds for Cooperative Agreements for the prevention of human immunodeficiency virus (HIV) infection in women and infants. These projects will develop, implement, and evaluate interventions to prevent HIV infection in women at high risk of infection and facilitate pregnancy planning and the prevention of unintended pregnancies among woman at high risk and women infected with HIV. Two types of projects will be supported: (A) Community-level behavioral interventions, including the creation of volunteer and peer networks to promote and reinforce risk reduction; and (B) service-level interventions, including the provision of enhanced family planning services in non-traditional settings where women at high risk and women infected with HIV may be reached.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority: This program is authorized under the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended; and section 317(k) (42 U.S.C. 247b(k)), as amended.

Eligible Applicants

Eligible applicants are the official public health, family planning, and substance abuse agencies of states, the District of Columbia, the Commonwealth of Puerto Rico, and local governments, non-profit organizations, and other health, family planning, and substance abuse providers with a demonstrated capacity for working with racial and ethnic minority populations. To ensure adequate sample size for statistical analyses, all proposed activities must be located within standard metropolitan areas with a population of 500,000 or more according to the 1990 census, and with an AIDS case rate in excess of 15/100,000 during calendar year 1990 as determined by reports to the CDC.

Availability of Funds

Approximately $2.6 million is available in fiscal year 1991 to fund one to five new proposals for the community-level behavioral intervention component (Component A). Awards are expected to range from $175,000 to $800,000 with an average award of $500,000.

Approximately $1.0 million is available in fiscal year 1991 to fund one to four new proposals for the service-level intervention component (Component B). Awards are expected to range from $175,000 to $500,000 with an average award of $250,000.

Separate applications and budgets for each component must be submitted. Applicants submitting proposals for more than one component will not receive preference over those applicants submitting only one proposal.

Funds are expected to be awarded on or about September 25, 1991, for a 5 year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Purpose

The purpose of this program is to expand HIV prevention strategies into non-traditional settings (e.g., family planning and HIV prevention services in drug treatment centers) and target populations and to develop and test hypotheses and strategies for preventing HIV infection among women and infants.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting

activities under A and/or B, and CDC will be responsible for conducting activities under C.

A. Component A Recipient Activities

Allowable activities include interventions such as the creation of volunteer and peer networks to promote and reinforce risk reduction in the community (on the street, in homes, in community centers, churches, etc.) through the use of small media (novellas, newsletters, etc.), interpersonal contact, and community organization. Interventions should target women under 25 years of age, when possible, and *must* target women who belong to one or more of the following risk categories: (1) Crack or other non-injecting drug users, (2) women who trade sex for drugs or money, (3) sexual partners of injecting drug users (IDU), and (4) IDU. Interventions may not be clinic-based (including drug treatment centers, family planning programs, STD clinics, hospital or other) or school-based. Outreach activities solely for the purpose of referral to medical or clinical services (including substance abuse, family planning, or STD/HIV services), case management, and other activities (including educational activities) that are primarily carried out in medical or clinical settings will not be supported under this component.

Activities to be conducted are:

1. Identify and describe structural/environmental, behavioral, and psychosocial facilitators and barriers to risk reduction including, but not limited to:

a. Sources and patterns of communication and social influence surrounding the initiation and maintenance of sexual and drug-related risk behavior in women;

b. Individual and community beliefs and attitudes regarding HIV prevention;

c. The significance of condom and contraceptive use within sexual, social, and family relationships;

d. Cultural, linguistic, and religious influences;

e. Incentives and disincentives to risk reduction and pregnancy;

f. Alcohol and drug use; and

h. Other structural, psychological, and behavioral correlates of risk reduction.

2. Develop and implement culturally and linguistically sensitive interventions to influence specific structural/environmental, behavioral and psychosocial factors thought to promote risk reduction in this population such as, but not limited to:

a. Identifying and enlisting family, peer and community networks to promote and reinforce risk reduction;

b. Creating and mobilizing new networks of communication and influence around risk reduction;

c. Providing opportunities for risk reduction skill acquisition, behavioral rehearsal, and reinforcement of behavior change;

d. Using community members as role models in locally developed media to present information and persuasive messages about risk reduction;

e. Integrating HIV risk reduction messages with women's health and social need communications;

f. Enlisting sexual partners in risk reduction through activities targeting adolescent and adult males; and

g. Changing community norms around condom and contraceptive use and other HIV risk-reduction strategies through communication, role play, and persuasion.

3. Measure the success of interventions with the target populations in comparison to a control/comparison group with outcome measures of cognitive, behavioral, clinical, and structural/environmental changes such as:

a. Social normative support for HIV risk reduction (including acceptability and use of condoms by sexual partners, promotion of condoms use by friends, family and others, and other indicators of change in community norms);

b. Readiness to use condoms, confidence in one's ability to use condoms or to prevent pregnancy, and other psychosocial measures of change;

c. Acceptability and use of condoms;

d. Decreases in unprotected sex and other HIV risk behaviors;

e. Increases in utilization of family planning services, reproductive health and STD/HIV services, and use of contraception; and

f. Decreases in unintended pregnancies and STD rates. Non-intervention groups must have access to the existing HIV prevention activities available in the community, and, at the completion of an interview, interviewers must provide all participants with information on and telephone numbers for local family planning, STD/HIV, drug treatment and psychosocial support resources.

4. Collaborate with other funded sites and with CDC in the development of a multi-site protocol to carry-out and evaluate all activities so that findings can be used to facilitate national efforts to prevent HIV in women and children. Collaboration will require modifying sampling plans, interview schedules, intervention activities, and other elements of the applicant's proposal to meet the program goals.

5. Collaborate and coordinate efforts with appropriate health (e.g., pediatric AIDS demonstration programs, substance abuse treatment, youth-service, community-based, and minority organizations who deliver services or interventions to the target populations).

6. Maintain programmatic and budgetary flexibility to test the feasibility of alternate control, evaluation, and data management strategies, or to conduct short-term studies which seek to replicate or examine the relevance of potentially important findings from other HIV prevention studies affecting the target populations.

B. Component B Recipient Activities

Interventions for Component B should be clinic-based, should target women under 25 years of age, when possible, and must target women who belong to one or more of the following risk categories: (1) Crack users or other non-IDU, (2) women who trade sex for drugs or money, (3) sexual partners, of IDU, (4) IDU, (5) women with STD, and (6) women infected with HIV. Clinic-based activities may include outreach activities for the purpose of informing and referring women to appropriate clinic-based services, at least part of which must be provided by the applicant or provided through documented collaboration (e.g., subcontracts) between the applicant and other agencies described in the applicant's proposal.

Activities to be conducted are:

1. Identify and describe barriers to family planning service utilization and effective contraceptive use and HIV risk reduction among women at high risk and women infected with HIV including, but not limited to:

a. Individual beliefs, values, and attitudes regarding use of family planning services, pregnancy, and HIV prevention;

b. Lack of accessibility and acceptability of services;

c. Clinic management issues such as waiting time;

d. Lack of transportation, money, child care;

e. Cultural, linguistic, and religious influences;

f. Incentives and disincentives to risk reduction and pregnancy;

g. Alcohol and drug use;

h. Partner characteristics and related issues; and

i. Other structural, psychological and behavioral correlates of effective use of contraceptives.

2. Develop and implement culturally and linguistically sensitive interventions

to reduce barriers to the effective use of contraceptives, including condoms, and HIV risk reduction such as but not limited to: a Providing family planning services in non-traditional settings, such as drug treatment centers, shelters for the homeless, detention facilities, prisons, community health centers, STD clinics, and prenatal delivery services;

b. Developing linkages and improving mutual referral systems between family planning providers and other agencies who serve women at high risk and women infected with HIV or their sexual partners, including drug treatment centers, STD/HIV clinics, shelters for runaways and for the homeless, detention facilities, prenatal/delivery services, CDC-funded counseling and testing sites, and HRSA-funded primary care centers;

c. Integrating HIV prevention services into family planning and women's health services; and

d. Providing outreach to women not currently accessing family planning services.

3. Measure the success of interventions with the target populations in comparison to a control/comparison group with outcome measures of clinical behavioral, and structural changes such as increases in:

a. Utilization of family planning, reproductive health, STD/HIV, and drug treatment services;

b. Decreases in unintended pregnancies, STD rates, unprotected sex, and other HIV risk behaviors;

c. Acceptability and effective and consistent use of contraception;

d. Acceptability and use of condoms; and

e. Other psychosocial measures of behavior change as appropriate.

Non-intervention groups must have access to the existing HIV prevention activities available in the community, and, at the completion of an interview, interviewers must provide all participants with information on and telephone numbers for local family planning, STD/HIV, drug treatment, and psychosocial support resources.

4. Collaborate with other funded sites and with CDC in the development of a multi-site research protocol to evaluate all activities so that findings can be used to facilitate national efforts to prevent HIV in women and children. Collaboration will require modifying sampling plans, interview schedules, intervention activities and other elements of the applicant's proposal to meet the multi-site program goals.

5. Collaborate and coordinate efforts with appropriate health, family planning, substance abuse, youth-service, community-based, and minority organizations who deliver services or interventions to the target populations.

6. Maintain programmatic and budgetary flexibility to test the feasibility of alternate control, evaluation, and data management strategies, or to conduct short-term studies which seek to replicate or examine the relevance of potentially important findings from other HIV prevention research affecting the target populations.

c. *CDC Activities:*

1. Collaborate in the design of the protocol to be used in all sites for components A and B.

2. Collaborate in the design of all phases of the demonstrations. Provide consultation on data collection instruments and procedures, and provide coordination of research, evaluation, and intervention activities between and among the sites.

3. Collaborate in the data collection and analysis of information collected from these studies and other related activities.

4. Provide up-to-date scientific information regarding risk protective factors for HIV transmission and coordinate with the national HIV prevention program and family planning programs.

5. Assist in the transfer of information and methods developed in these projects to other prevention programs through the national HIV Prevention program, family planning programs, Maternal and Child Health programs, and other HIV care services authorized under the CARE Act.

Other Requirements

Recipients must comply with the document titled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1991), a copy of which is included in the application kit. In complying with the Program Review Panel requirements contained in this document, recipients are encouraged to use an existing Program Review Panel such as the one created by the health department's HIV/AIDS Prevention Program.

Review and Evaluation Criteria

Applications for each component [(A) community-level behavioral interventions and (B) service-level interventions] will be reviewed and evaluated separately. Each application will be reviewed and evaluated individually according to the following criteria (Maximum 100 total points)

A. The extent to which the applicant demonstrates knowledge of evaluation, research methods, applied behavioral research in the area of HIV-related risk behaviors, ability to collect data on the target population, and ability to analyze both quantitative and qualitative data. (15 points)

B. The extent to which the applicant demonstrates the capacity to initiate and complete effective behavioral and evaluation research in the area of HIV pervention in women and infants. (15 points)

C. The extent to which the applicant provides evidence of collaborative relationships between service providers and researchers and between government, health, and community-based organizations who are or will be involved in the design, implementation, and evaluation of the project. (15 points)

D. The extent to which the applicant demonstrates an understanding of the community and the target population, and has experience in delivering high-quality interventions at the community-level or clinical-level to the target population. (10 points)

E. the Quality of the applicant's plan to design and evaluate interventions that will prevent HIV infection in women and infants, and that are realistic, replicable, and meet the intended purposes of the funding; and the extent to which the applicant demonstrates the interest, ability, and willingness to collaborate with CDC and other funded projects in developing a joint multi-site project protocol that may require incorporating, changing, or eliminating certain activities proposed by the applicant. (20 points)

F. The extent to which the applicant's proposed staff, equipment, and facilities meet project requirements, the extent to which the applicant can demonstrate that institutional barriers will not impede the initiation, implementation, and completion of the project (through letters of support from the head administrative office of the organization where the program will be carried out outlining specifically how the project will be supported institutionally, including endorsement of the timeline, project staff requirements, collaborative and contractual relationships, and other requirements of the project included in the proposal), and the extent to which the applicant proposes to involve appropriate researchers and HIV/STD and family planning/women's health programs in the proposed project. (25 points)

Consideration will also be given to the extent to which the budget request is clearly explained, adequately justified,

reasonable, consistent with the intended use of cooperative agreement funds, and the extent to which the applicant is contributing its own resources to HIV/AIDS prevention activities.

Proposals with budgets larger than can reasonably be funded under this announcement may be returned to the applicant without review.

Projects involving the collection of information from 10 or more individuals are funded by Cooperative agreement will be subject to review by Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than September 24, 1991. CDC does not guarantee to accommodate or explain for state process recommendations it received after that date.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Nubmer is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Application Submission and Deadline

The original and two copies of the application PHS 5161-1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Raod, NE., room 300, Atlanta, Georgia 303.05, on or before July 26, 1991.

A. *Deadline*: Applications shall be considered as meeting the deadline if they are either

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independnet review group.

B. *Late Applications:* Applications which do not meet the criteria in A.1. or 2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package and business management technical assistance may be obtained from Linda Long, Grants Management Specialist, Grants Management Branch, Procurement and Grants Offices, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6640 or FTS 236-6640.

Please refer to Announcement Number 124 when requesting information and submitting any application on the Request for Assistance.

Programmatic Technical assistance may be obtained from Christine Galavotti, Ph.D., Center for Prevention Services, (404) 639-0848 or FTS 236-0848 or Ann Duerr, M.D., Pd.D., Center for Chronic Disease Prevention and Health Promotion, (404) 488-5250, Centers for Disease Control, Atlanta, Georgia 30333.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 6, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-13915 Filed 6-11-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91N-0215]

Drug Export; Lomefloxacin Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that G.D. Searle & Co. has filed an application requesting approval for the export of the human drug lomefloxacin hydrochloride to Portugal.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schall, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8054.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that G.D. Searle & Co., 4901 Searle Parkway, Skokie, IL 60077, has filed an application requesting approval for the export of the drug lomefloxacin hydrochloride to Portugal. This product is intended for use in the treatment of complicated and uncomplicated urinary tract infections, prophylaxis in transurethral surgery, and acute exacerbation of chronic bronchitis. The application was received and filed in the Center for Drug Evaluation and Research on May 13, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 24, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44)

Dated: June 3, 1991.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91–13988 Filed 6–11–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0214]

Drug Export; Thioplex (Thiotepa) Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lederle Laboratories has filed an application requesting approval for the export of the human drug Thioplex (thiotepa) Injection to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schall, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8054.

SUPPLEMENTARY INFORMATION: The drug export provisons in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirement that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Lederle Laboratories, Pearl River, NY 10965, has filed an application requesting approval for the export of the drug Thioplex® (thiotepa) Injection to the United Kingdom. This drug is indicated for use in the treatment of neoplastic diseases. The application was received and filed in the Center for Drug Evaluation and Research on May 22, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 24, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44)

Dated: June 3, 1991.

Daniel L. Michels,

Director Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91–13989 Filed 6–11–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0402]

Guidelines for the Assessment and Management of Iron Deficiency in Women of Childbearing Age; Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Guidelines for the Assessment and Management of Iron Deficiency in Women of Childbearing Age." The report was prepared by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB).

DATES: The report became available on May 17, 1991.

ADDRESSES: Submit written requests for single copies of the report to FASEB'S Special Publication Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, along with $18 to cover the cost. In the near future, the report will be available from the National Technical Information Service, 5285 Royal Rd., Springfield, VA 22161. Send two self-addressed adhesive labels to assist these offices in processing your requests. The report is available for public examination at the LSRO, FASEB office (address above) and at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF–265), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–485–0087.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–88–2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety.

In the **Federal Register** of December 19, 1988 (53 FR 51009), FDA announced that it had asked LSRO of FASEB, as a task under the contract, to develop guidelines that FDA would make available to health care providers. The stated purpose of the guidelines is to help in: (1) Identifying impaired iron status and anemia in women, (2) determining the most appropriate methods of assessment, and (3) selecting approaches to management of anemia in these women.

FDA is now announcing that the report entitled "Guidelines for the Assessment and Management of Iron Deficiency in Women of Childbearing Age" became available to the public on May 17, 1991.

Dated: June 7, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–13987 Filed 6–11–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91D–0179]

Warning Letters; Regulatory Procedures Manual, Chapter 8–10; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revision of Chapter 8–10, entitled "Warning Letters," of the Regulatory Procedures Manual (RPM). Chapter 8–10 was formerly entitled "Notice of Adverse Findings and Regulatory Letters." This RPM revision describes FDA's policy and procedures governing the use of Warning Letters. The revision rescinds all use of Notice of Adverse Findings Letters, Regulatory Letters, and statements regarding these letters.

ADDRESSES: RPM, Chapter 8–10 "Warning Letters" may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 91–166957 and include payment of $15.00 for each hard copy of the document or $8.00 for each microfiche copy. Payment may be made by check, money order, charge card (American Express, Mastercard, or Visa), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650.

RPM, Chapter 8–10 "Warning Letters" is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William T. Lampkin, Division of Compliance Policy (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1500.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 23, 1978 (43 FR 27498), FDA issued a proposed rule to amend part 7 (21 CFR part 7) that would have established regulations describing the policies and procedures which govern correspondence designed to achieve compliance with the laws enforced by the agency. In the **Federal Register** of September 12, 1980 (45 FR 60449), the proposed rule was withdrawn; the rulemaking proceedings begun by the proposal were terminated, and the decision was announced to incorporate the principles outlined in the proposal and subsequent revisions in chapter 8–10 of the RPM.

This revision of the RPM, chapter 8–10, entitled "Warning Letters," initiates FDA's use of one category of letters, Warning Letters, and discontinues the use of two categories of letters, Notice of Adverse Findings Letters and Regulatory Letters. This revision was made to improve the effectiveness and timeliness of such correspondence. Major considerations for use of Warning Letters are as follows:

(1) Warning Letters are issued for the purposes of achieving voluntary compliance and establishing prior notice.

(2) Warning Letters are issued directly by the district directors, although some program areas require center concurrence prior to issuance, or issuance by the centers.

(3) Warning Letters do not contain a commitment to take enforcement action, but they do contain a specific warning that failure to take prompt corrective action may result in enforcement action.

(4) Warning Letters are issued only for violations of regulatory significance.

(5) Warning Letters have a recipient response time of 15 working days, unless otherwise indicated.

(6) Warning Letters are on public display at the agency Freedom of Information Staff office.

This revision of the RPM, chapter 8–10, is intended only for FDA use as guidance when considering whether to issue a Warning Letter, and it does not limit the agency's enforcement discretion on whether to initiate regulatory action after evaluation of all relevant facts. The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: June 7, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–13986 Filed 6–11–91; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Office of the Assistant Secretary for Health; the Department of the Interior and Related Agencies Appropriations, Fiscal Year 1989; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of May 9, 1991, under Public Law 100–446, "The Department of the Interior and Related Agencies Appropriations, Fiscal Year 1989," from the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Director, Indian Health Service, without authority to redelegate, all the authorities vested in the Secretary under Public Law 100–446, "The Department of the Interior and Related Agencies Appropriations, Fiscal Year 1989," as amended hereafter, to accept ownership of the buildings offered at no cost by the Gila River Indian Tribe for use solely as the Phoenix Area Regional Youth Treatment Center for Alcohol and Substance Abuse. This delegation excludes the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation became effective upon the date of signature. In addition, I hereby affirm and ratify any actions taken by the Director, Indian Health Service, or his subordinates which, in effect, involved the exercise of the delegated authority prior to the effective date of the delegation.

Dated: May 29, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91–13916 Filed 6–11–91; 8:45 am]

BILLING CODE 4160–20–M

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently by 55 FR 38162–63, September 17, 1990) is amended to revise the functional statement for the Division of State Assistance and establish the Division of

Review within the Office for Treatment Improvement (OTI), ADAMHA.

Section HM–B, Organization and Functions, Alcohol, Drug Abuse, and Mental Health Administration (HM), is amended as follows:

Under the heading *Divisions for State Assistance (HMAB4),* delete the functional statement and substitute the following functional statement:

(1) Administers the Alcohol and Drug Abuse and Mental Health Services (ADMS) Block Grant program, including compliance reviews, management reviews, and technical assistance to States, Territories, and Indian Tribes; (2) establishes guidance for and collects, analyzes, and provides assistance to strengthen annual State Substance Abuse Services Plans; (3) establishes, coordinates, implements, and monitors data activities as they relate to ADMS Block Grant and long-term funding policy for drug abuse treatment; (4) provides for information exchange and technical assistance between ADAMHA and other Government agencies, national organizations, and State and local Governments on matters relating to alcohol, drug abuse, and mental health services programs; (5) collaborates with national organizations, States, communities, and substance abuse treatment and other related health and human services providers to upgrade the quality of drug treatment, improve the effectiveness of drug treatment programs, and expand drug treatment capacity; (6) collaborates with the Institutes in the collection of treatment data and in the application of health services research to alcohol, drug abuse, and mental health treatment programs; (7) coordinates with State and local Governments and other organizations to improve services through improved data collection, analysis, and feedback; and (8) plans, initiates, and conducts special analyses and studies on the organization and financing of services provided through the ADMS Block Grant.

After the statement for the *Division for State Assistance (HMAB4),* add the following:

Division of Review (HMAB5): (1) Provides advice to the Director on improvement of treatment practices as recommended in the review process; (2) administers peer review of the grants program in compliance with HHS, PHS, and ADAMHA policy and developments OTI review policy with respect to merit criteria, development of announcements, report of review results, and related matters; (3) administers the review of OTI contracts; (4) administers a Federal advisory committee and the Confidentiality Certificate program; (5) oversees committee management functions; (6) establishes evaluation strategies to assess the effectiveness of the Division in meeting overall program goals; (7) provides guidance to OTI staff and applicants on policies and procedures concerning peer review; and (8) participates, through membership in the Extramural Program Review Committee, in the formulation of Agency policy relating to peer review.

Dated: May 24, 1991.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–13923 Filed 6–11–91; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D–91–951]

Acting Assistant Secretary for Fair Housing and Equal Opportunity; Designations

AGENCY: Office of Fair Housing and Equal Opportunity, HUD.

ACTION: Designation.

SUMMARY: This designation revises the designation of officials who may serve as Acting Assistant Secretary for Fair Housing and Equal Opportunity.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20401, telephone (202) 708–3137 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This designation is being revised because the positions of General Deputy Assistant Secretary for Fair Housing and Equal Opportunity and Deputy Assistant Secretary for Enforcement and Compliance have been combined into a single position designated General Deputy Assistant Secretary for Fair Housing and Equal Opportunity/Enforcement and Compliance. Under this revised designation, the official serving in this new position is first in order of succession in the case of absence or vacancy in the position of Assistant Secretary for Fair Housing and Equal Opportunity.

Designation of Acting Assistant Secretary for Fair Housing and Equal Opportunity

Section A. Designation. Each of the officials listed below is designated to act as Assistant Secretary for Fair Housing and Equal Opportunity, in the case of absence or vacancy in such position. The named officials shall serve in the order set forth.

(1) General Deputy Assistant Secretary for Fair Housing and Equal Opportunity/Enforcement and Compliance;

(2) Deputy Assistant Secretary for Operations and Management;

(3) Director, Office of Management and Field Coordination;

(4) Director, Office of Fair Housing Enforcement and Section 3 Compliance;

(5) Director, Office of HUD Program Compliance;

(6) Director, Office of Voluntary Compliance; and

(7) Director, Office of Program Standards and Evaluation.

Section B. Authorization. Each head of an organizational unit of Fair Housing and Equal Opportunity is authorized to designate an employee under his or her jurisdiction to serve as acting head during the absence of the head of the unit. An official serving in an acting position under this section does not hold that position for purposes of the order of succession set forth in section A.

Section C. Functions. The official serving in an acting capacity under this designation shall have all the powers, functions, and duties assigned to such position.

Section D. Supersedure. This designation supersedes the designation effective (54 FR 40213, September 29, 1989).

Authority: Sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 1991.

Gordon Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91–13853 Filed 6–11–91; 8:45 am]

BILLING CODE 4210–28–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–91–3236; FR–2952–N–01]

Public Housing Development and Major Reconstruction of Obsolete Project Grants; Announcement of Fund Awards

AGENCY: Department of Housing and Urban Development, Office of the

Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of public housing development and Major Reconstruction of Obsolete Project awards to Public Housing Agencies.

SUMMARY: Section 102(a)(4)(C) of the Department of Housing and Urban Devleopment Reform Act of 1989 requires the Department to notify the public of all funding decisions made by the Department. With the exception of four projects reserved in September, 1990, to satisfy court orders, Fiscal Year 1990 public housing development grants and grants for the Major Reconstruction of Obsolete Projects (MROP), as provided for by the U.S. Housing Act of 1937, were reserved during late March and early April, 1991. This announcement identifies all recipients of these grants and provides the project number, number of units, and the development method (e.g., conventional, turnkey, acquisition or MROP).

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Directors, Office of Construction, Rehabilitation and Maintenance, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1800. (This is not a toll-free number.)

Brackground

On June 18, 1990, the Department published a NOFA advising Public Housing Agencies (PHAs) that $443,058,110 in grant appropriations and $56,512 in carryover funds were available in Federal Fiscal Year 1990 for the purpose of developing public housing units or to provide for the major reconstruction of obsolete public housing projects (MROP) under the provisons of 24 CFR Part 941. The NOFA provided application procedures and the method the Department would use to rate and rank approvable applications. On October 24, 1990, the Department issued a revised NOFA providing minor modifications to the June 18 NOFA as well as a deficiency correction process. (The capability to correct applications had been omitted from the June 18 NOFA.) The October 24 revision also allowed for the submission of new applications. It further instructed Regional Administrators to report their most highly ranked applications to Headquarters "within 100 days of the [revised] PHA application submission deadline." Of the $443,114,622 available, $443,096,228 was awarded and $18,394 was carried over. Following is a list of PHAs that were awarded grants. The development method ("Dev Met") is shown as (C)onventional, (T)urnkey, (A)cquisition, or (M)ajor reconstruction.

PHA Name	Project No.	Dev met	Units	Amount
Region I				
Boston Office:				
Boston Hsg Auth, 52 Chauncy St, Boston, MA	MA06–P002–102	M	96	5,975,965
Cambridge Hsg Auth, 270 Green St, Cambridge, MA	MA06–P003–035	A	45	4,000,500
Fall River Hsg Auth, 85 Morgan St, Fall River, MA	MA06–P006–028	M	60	3,500,000
Hartford Office:				
Stamford Hsg Auth, 22 Clinton Ave, Stamford, CT	CT26–P007–018	A	24	2,823,600
Milford Hsg Auth, PO Box 4123, Milford, CT	CT26–P030–008	C	15	1,835,900
W. Hartford Hsg Auth, 759 Farmington Ave, W. Hartford, CT	CT26–P039–002	A	17	1,889,550
Brooklyn Hsg Auth, PO Box 156, Danielson, CT	CT26–P066–001	C	27	2,844,450
Region II				
Newark Office:				
Newark Hsg Auth, 57 Sussex Ave, Newark, NJ	NJ39–P002–043	T	100	11,016,500
	NJ39–P002–044	T	94	10,357,700
	NJ39–P002–045	T	100	11,016,500
	NJ39–P002–046	T	96	10,584,700
Jersey City Hsg Auth, 400 US Hwy #1, Jersey City, NJ	NJ39–P009–023	M	54	4,390,970
Morris Co Hsg Auth, PO Box 900, Morristown, NJ	NJ39–P092–008	C	40	3,742,800
Madison Hsg Auth, 15 Chateau Thierry Ave, Madison, NJ	NJ39–P105–004	C	40	3,836,800
Gloucester Co Hsg Auth, 223 S Evergreen Ave, Woodbury, NJ	NJ39–P204–005	A	10	1,002,000
New York City Office:				
New York City, 250 Broadway, New York City, NY	NY36–P005–323	T	100	12,420,000
	NY36–P005–324	T	100	12,420,000
	NY36–P005–325	T	100	12,420,000
	NY36–P005–326	T	70	8,694,000
Region III				
Baltimore Office:				
Baltimore Hsg Auth, 417 E Fayette St, Baltimore, MD	MD06–P002–094	C	160	13,424,000
Charleston Office:				
Fairmont Hsg Auth, 527 Fairmont Ave, Fairmont, WV	WV15–P09–007	C	15	1,259,250
Keyser Hsg Auth, 440 Virginia St, Keyser, WV	WV15–P010–003	C	15	1,226,250
Buckhannon Hsg Auth, Hinkle Dr, Buckhannon, WV	WV15–P013–004	C	24	2,014,800
Washington, D.C. Office:				
Hsg Opportunities Comm, 10400 Detrick Ave, Kensington, MD	MD39–P004–042	A	40	3,529,300
Philadelphia Office:				
Dover Hsg Auth, 1266–76 Whiteoak Rd, Dover, DE	DE26–P002–008	T	22	1,993,200
Philadelphia Hsg Auth, 2012–18 Chestnut St, Philadelphia, PA	PA26–P002–108	C	48	5,395,200
Reading Hsg Auth, 400 Hancock Blvd, Reading, PA	PA26–P009–013	A	10	858,200
York Hsg Auth, 31 S Broad St, York, PA	PA26–P022–033	C	15	1,302,750
Mifflin Co Hsg Auth, Lawler Pl, Lewistown, PA	PA26–P041–009	C	12	936,900
	PA26–P041–010	C	8	655,600
Carbon Co Hsg Auth, 360 Delaware Ave, Palmerton, PA	PA26–P067–007	C	25	2,421,250
Cumberland Co Hsg Auth, 114 N Hanover St, Carlisle, PA	PA26–P075–006	C	10	939,000
Pittsburgh Office				
Pittsburgh Hsg Auth, Ross St, Pittsburgh, PA	PA28–P001–062	M	64	3,603,570
	PA28–P001–064	T	10	854,500
Johnstown Hsg Auth, PO Box 419, Johnstown, PA	PA28–P019–016	C	15	1,242,000
Altoona Hsg Auth, 1100 Eleventh Ave, Altoona, PA	PA28–P031–014	C	24	2,094,900

PHA Name	Project No.	Dev met	Units	Amount
Richmond Office:				
Newport News Hsg Auth, PO Box 77, Newport, News, VA	VA36-P003-019	C	25	1,515,050
Lynchburg Hsg Auth, PO Box 1298, Lynchburg, VA	VA36-P013-010	C	12	818,400
Hampton Hsg Auth, PO Box 280, Hampton, VA	VA36-P017-012	C	20	1,570,000
Cumberland Hsg Auth, PO Box 1238, Lebenon, VA	VA36,P029-012	C	7	492,800
Lee Co Hsg Auth, PO Box 667, Jonesville, VA	VA36-P034-008	C	24	1,639,800
Region IV				
Atlanta Office:				
Atlanta Hsg Auth, 739 W Peachtree St, Atlanta, VA	GA06-P006-061	M	120	5,239,331
Macon Hsg Auth, PO Box 4928, Macon, GA	GA06-P007-020	C	30	2,265,150
Albany, PO Box 485, Albany, GA	GA06-P023-014	C	30	2,088,000
West Point, PO Box 545, West Point, GA	GA06-P065-007	C	20	1,360,000
Fitzgerald, PO Drawer 1067, Fitzgerald, GA	GA06-P070-008	C	26	1,869,800
Greensboro, PO Box 217, Greensboro, GA	GA06-P105-009	C	20	1,459,600
Cuthbert, 101 E Dawson St, Cuthbert, GA	GA06-P226-004	C	40	2,844,200
Birmingham Office:				
Sylacauga Hst Auth, Box 539, Betsey Ross Dr, Sylacauga, AL	AL09-P057-011	C	18	1,198,500
Evergreen Hsg Auth, PO Box 187, Evergreen, AL	AL09-P181-006	C	30	2,050,500
Columbia Office:				
Spartanburg Hsg Auth, 764 N Church St, Spartanburg, SC	SC16-P003-023	A	20	1,470,200
Conway Hsg Auth, 2303 Leonard Ave, Conway, SC	SC16-P025-011	A	20	1,523,500
Beaufort Hsg Auth, 1009 Prince St, Beaufort, SC	SC16-P026-008	A	30	2,194,500
Georgetown Hsg Auth, 1 Lincoln St, Georgetown, SC	SC16-P026-011	A	30	2,167,500
Greensboro Office:				
Durham Hsg Auth, 330 E Main St, Durham, NC	NC19-P013-022	C	40	2,799,000
Jackson Office:				
MS Regional Hsg V, PO Box 419, Newton, MS	MS26-P030-025	C	30	2,152,900
Grenwood Hsg Auth, 105 Jackson St, Greenwood, MS	MS26-P107-013	C	47	3,167,200
Jacksonville Office:				
Jacksonville Hsg Auth, 1300 Broad St, Jacksonville, FL	FL29-P001-034	T	170	10,947,900
Louisville Office:				
Louisville Hsg Auth, 420 S 8th St, Louisville, KY	KY36-P001-024	C	50	3,757,500
Lex-Fayette Hsg Auth, 635 Ballard St, Lexington, KY	KY36-P004-016	C	102	7,860,300
Mt. Sterling Hsg Auth, Barnard Ave, Mt Sterling, KY	KY36-020-008	A	6	450,900
Central City Hsg Auth, 509 S 9th St, Central City, KY	KY36-P070-002	C	20	1,591,000
Vanceburg Hsg Auth, 802 Fairlane Dr, Vanceburg, KY	KY36-P084-003	C	12	963,350
Beaver Dam Hsg Auth, 3030 James Ct, Beaver Dam, KY	KY36-P122-003	C	20	1,367,000
Nashville Office:				
Metro Devel & Hsg Auth, 701 S Sixth St, Nashville, TN	TN43-P005-034	C	50	3,562,500
Region V				
Chicago Office:				
Habitat Co.-Receiver, 405 N Wabash Ave, Chicago, IL	IL06-P802-147	T	175	16,100,000
Cincinnati Office:				
Dayton Hsg Auth, 400 Wayne Ave, Dayton, OH	OH10-P005-053	T	35	2,646,000
Columbus Office:				
Chillocothe Hsg Auth, 178 W Fourth St, Chillocothe, OH	OH16-P024-004	T	50	4,317,500
Perry Hsg Auth, Sr Citizens Bldg, Crooksville, OH	OH16-P034-003	T	50	4,137,500
Fairfield Hsg Auth, 1506 Amherst Pl, Lancaster, OH	OH16-P070-002	T	50	4,137,500
Cleveland Office:				
Youngstown Hsg Auth, 131 W Boardman St, Youngstown, OH	OH12-P002-018	C	10	848,500
Cuyahoga Co Hsg Auth, 1441 W 25th St, Cleveland, OH	OH12-P003-088	M	157	8,586,542
Lucas Co Hsg Auth, 435 Nebraska Ave, Toledo, OH	OH12-P006-048	M	100	4,431,823
Lorain Co Hsg Auth, 1730 Broadway, Lorain, OH	OH12-P012-020	C	50	4,794,000
Detroit Office:				
Ferndale Hsg Auth, 415 Withington, Ferndale, MI	Mi28-P096-004	C	25	2,416,750
Grand Rapids Office:				
Mt. Pleasant Hsg Auth, 1 Mosher St, Mt Pleasant, MI	MI33-P074-003	C	24	2,121,600
Ionia Hsg Auth, 667 Union St, Ionia, MI	MI33-P117-005	C	16	1,288,000
Indianapolis Office:				
Anderson Hsg Auth, 528 W 11th St, Anderson, IN	IN36-P006-004	A	18	1,565,900
Milwaukee Office:				
Milwaukee Hsg Auth, 809 N Broadway St, Milwaukee, WI	WI39-P002-041	C	13	1,459,050
Wausau Hsg Auth, 407 Grant St, Wausau, WI	WI39-P031-003	C	25	2,294,700
Eau Claire Hsg Auth, PO Box 5148, Eau Claire, WI	WI39-P207-006	C	25	2,492,550
Minneapolis-St Paul Office:				
Worthington Hsg Auth, 819 Tenth St, Worthington, MN	MN46-P034-004	C	10	837,900
Faribault Hsg Auth, 208 WN 1st St, Faribault, MN	MN46-P157-003	C	25	2,247,000
Region VI				
Ft. Worth Office:				
Albuquerque Hsg Auth, 2200 University, SE, Albuquerque, NM	NM21-P001-027	C	30	2,485,900
Santa Fe City Hsg Auth, PO Box CC, Santa Fe, NM	NM21-P009-012	C	25	1,955,000
Lubbock Hsg Auth, PO Box 2568, Lubbock, TX	TX21-P018-010	C	46	2,936,000
Commanche Hsg Auth, 419 Lindsey, Commanche, TX	TX21-P169-006	A	15	1,098,000
Houston Office:				
Beaumont Hsg Auth, PO Box 1312, Beaumont, TX	TX24-P023-009	C	50	3,657,500
Woodville Hsg Auth, 803 S Pecan St, Woodville, TX	TX24-P225-003	C	30	2,269,500
Nacogdoches Hsg Auth, 804 Jordan St, Nacogdoches, TX	TX24-P486-002	C	38	2,680,900
Little Rock Office:				
Dewitt Hsg Auth, 101 Oakland, Dewitt, TX	AR37-P048-002	C	30	2,143,900

PHA Name	Project No.	Dev met	Units	Amount
Melbourne Hsg Auth, PO Box 398, Melbourne, AR.	AR37-P103-002	C	12	796,200
White River Reg HA, PO Box 2656, Batesville, AR.	AR37-P197-008	A	20	1,342,000
New Orleans Office:				
Kenner Hsg Auth, 1013 31st St, Kenner, LA.	LA48-P012-006	C	35	2,607,418
Oklahoma City Office:				
Broken Bow Hsg Auth, PO Box 177, Broken Bow, OK.	OK56-P006-004	C	24	1,745,800
Shawnee Hsg Auth, PO Box 3427, Shawnee, OK.	OK56-P095-007	C	26	1,834,300
San Antonio Office:				
Brownsville Hsg Auth, 2606 Boca Chica Blvd, PO Box 4420, Brownsville, TX.	TX59-P007-016	C	30	2,167,400
Eagle Pass Hsg Auth, PO Box 844, Eagle Pass, TX.	TX59-P019-011	C	25	1,768,500
Weslaco Hsg Auth, PO Box 95, Weslaco, TX	TX59-P051-005	A	50	3,563,000
San Marcos Hsg Auth, Allen Wood Homes, Thorp La, San Marcos, TX.	TX59-P087-007	A	35	2,717,000
REGION VII				
Kansas City Office:				
Kansas City Hsg Auth, 1124 N 9th St, Kansas City, KS.	KS16-P001-025	T	5	498,500
Wichita Hsg Auth, 307 N Riverview, Wichita, KS.	KS16-P004-013	C	5	345,750
	KS16-P004-014	C	4	231,750
Dodge City Hsg Auth, 407 E Bend St, Dodge City, KS.	KS16-P006-003	C	15	1,093,000
Mound City Hsg Auth, PO Box 210, Mound City, KS.	KS16-P033-002	C	10	720,800
Des Moines Office:				
Central Iowa Reg HA, 1111 Ninth St, suite 240, Des Moines, IA.	IA05-P131-005	C	20	1,485,409
Omaha Office:				
Omaha Hsg Auth, 540 S 27th St, Omaha, NE.	NE26-P001-028	A	25	1,940,700
Douglas Co Hsg Auth, 5449 N 108th St, Omaha, NE	NE26-P153-004	A	25	1,990,500
St. Louis Office:				
St Louis Co Hsg Auth, PO Box 23886, St Louis, MO	MO36-P004-019	C	10	892,000
Clarkton Hsg Auth, Box 652, Clarkton, MO	MO36-P025-005	T	25	1,958,750
Malden Hsg Auth, Box 395, Malden, MO	MO36-P028-005	T	30	2,350,500
Hayti Hgts Hsg Auth, 100 N. Martin Luther King Dr, Hayti Heights, MO	MO36-P223-006	T	25	2,043,750
Region VIII				
Denver Office:				
Denver Hsg Auth, 1100 N Colfax Ave, Denver, CO	CO06-P001-042	C	15	1,159,500
Walsenburg Hsg Auth, PO Box 312, Walsenburg, CO	CO06-P003-007	A	15	1,176,300
Colorado Spgs Hsg Auth, 30 S Nevada St, Colorado Springs, CO	CO06-P028-024	A	15	1,176,300
Jefferson Co Hsg Auth, 1445 Holland St, Lakewood, CO	CO06-P072-008	A	15	1,159,500
Salt Lake Co Hsg Auth, 1962 S 200 E, Salt Lake City, UT	UT06-P003-026	A	12	894,850
Wyoming Comm Dev Admin, PO Box 6588, Cheyenne, WY	WY06-P017-003	C	15	1,083,750
Region IX				
Los Angeles Office:				
LA Co Hsg Auth, 4800 Brooklyn Ave, Los Angeles, CA	CA16-P002-139	A	100	10,385,000
LA City Hsg Auth, 515 Columbia Ave, Los Angeles, CA	CA16-P004-185	C	30	3,019,600
	CA16-P004-186	T	23	2,261,950
	CA16-P004-187	T	9	909,950
	CA16-P004-188	T	9	909,950
	CA16-P004-189	T	9	909,950
	CA16-P004-190	T	20	1,969,500
Santa Barbara Hsg Auth, 815 W Ocean Ave, Lompoc, CA	CA16-P021-034	A	73	7,564,050
Phoenix Office:				
Phoenix Hsg Auth, 830 E. Jefferson, Phoenix, AZ	AZ20-P001-039	A	50	4,044,400
Tucson Hsg Auth, PO Box 27210, Tucson, AZ	AZ20-P004-045	A	100	8,303,800
S. Tucson Hsg Auth, 1713 S 3rd Ave, S Tucson, AZ	AZ20-025-005	C	20	1,510,000
Sacramento Office:				
Butte Co Hsg Auth, 554 Vallombrosa Ave, Chico, CA	CA30-P043-015	C	50	4,257,500
San Francisco Office:				
Fresno City Hsg Auth, PO Box 11985, Fresno, CA	CA39-P006-026	C	28	2,614,000
Merced Co Hsg Auth, 405 U St, Merced, CA	CA39-P023-022	A	24	2,187,000
	CA39-P023-023	A	25	2,261,500
Stanislaus Co Hsg Auth, PO Box 3958, Modesto, CA	CA39-P026-027	A	30	2,586,000
Alameda Co Hsg Auth, 29800 Mission Blvd, Hayward, CA	CA39-P067-016	A	18	2,088,900
Clark Co Hsg Auth, 5064 E Flamingo Rd, Las Vegas, NV	NV39-P013-018	A	50	4,552,500
Region X				
Seattle Office:				
King Co Hsg Auth, 15455 65th Ave, S, Seattle, WA	WA19-P002-061	A	18	1,643,400
Tacoma Hsg Auth, 1728 E 44th St, Tacoma, WA	WA19-P005-022	A	19	1,794,250
Whatcom Co Hsg Auth, 208 Unity, Lower Level, Bellingham, WA	WA19-P041-011	A	15	1,330,500
Pierce Co Hsg Auth, PO Box 45410, Tacoma, WA	WA19-P054-011	A	17	1,552,100
Portland Office:				
SW Idaho Coop HA, 1180 W Finch Dr, Nampa, ID	ID16-P016-003	C	12	1,052,550
Portland Hsg Auth, PO Box 13220, Portland, OR	OR16-P002-051	C	30	2,515,500
NE Oregon Hsg Auth, PO Box 3357, LaGrande, OR	OR16-P032-002	C	8	655,600
	OR16-P032-003	C	5	409,750
	OR16-P032-004	C	12	983,400
Vancouver Hsg Auth, 500 Omaha Way, Vancouver, WA	WA16-P008-021	A	14	1,173,900

Dated: June 5, 1991.

Michael B. Janis,

Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 91–13854 Filed 6–11–91; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–4320–09]

Environmental Impact Statement on Vegetation Treatment Program; Thirteen Western States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement on Vegetation Treatment on Bureau of Land Management Lands in Thirteen Western States.

SUMMARY: Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has prepared a final environmental impact statement (FEIS) on vegetation treatment measures proposed for use on BLM-administered lands in thirteen contiguous western states. The purpose of the vegetation treatment program is to manage the vegetation for improved rangeland and forest forage and habitat conditions for wildlife and livestock, watershed protection, and to provide guidelines for herbicide application regarding human health and safety. Potential vegetation treatment methods include biological, chemical, mechanical, manual, and thermal methods, individually and in combination. The FEIS analyzes impacts of ground and aerial application of herbicides. The BLM proposes to implement a combination of vegetation treatment programs on approximately 372,000 acres annually in Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oklahoma, eastern Oregon, South Dakota, Utah, Washington, and Wyoming. The impacts of BLM's program to manage vegetation in California and western Oregon, were addressed in separate EIS documents and, therefore, are not analyzed in this FEIS.

CONTACT: Written comments should be sent to: Jim Melton, Team Leader, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: The proposed action and alternatives incorporate a mix of vegetation treatment measures including biological, chemical, mechanical, and thermal methods to achieve the most cost effective and practical means of satisfying specific vegetation management objectives. Alternatives include various combinations of the aforementioned treatments under five basic themes consisting of: the Proposed Action, No Action, No Aerial Application of Herbicides, No Prescribed Burning, and No Herbicide Use. The proposed action represents an integrated pest management approach for the vegetation treatment program. The "Environmental Consequences" section depicts reasonably foreseeable direct, indirect, and cumulative impacts of the Proposed Action and alternatives. Impacts on the biological, physical, and social components of the human environment are also analyzed.

Dated: May 30, 1991.

Ray Brubaker,

State Director.

[FR Doc. 91–13876 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–22–M

[CA–010–01–3110–10–B002; CA 28092]

Realty Action Exchange of Public and Private Lands in San Luis Obispo County, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to notice of realty action—CA 28092.

SUMMARY: The notice for this exchange published on May 17, 1991 in vol. 56, no. 96 of the **Federal Register** is hereby voided. The subject exchange will operate under the original notices published on December 3, 1987 in vol. 52, no. 232 and corrected on October 4, 1988 in vol. 53, no. 192 of the **Federal Register.** The serial number for the subject exchange will revert back to the original number of CA 20050.

Dated: June 3, 1991.

Daniel E. Vaughn,

Acting Caliente Resource Area Manager.

[FR Doc. 91–13922 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Meeting, Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 8:30 a.m. to 5:30 p.m. on Thursday, June 27; and from 8 a.m. to 1:15 p.m. on Friday, June 28, 1991.

Place: The meeting will be held at the North Coast Inn, 4975 Valley West Blvd., Arcata, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097–1006, telephone (916) 842–5673.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The Council will meet principally to consider public and agency comments on the draft long term plan for management of harvests of Klamath anadromous fish stocks. The draft plan was available for comment between March 1 and April 30, 1991. The Council will also hear reports on 1991 fish harvests and regulations.

Dated: May 31, 1991.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–13925 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 30, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC

20013–7127. Written comments should be submitted by June 27, 1991.

Carol D. Shull,

Chief of Registration, National Register.

Alabama

Mobile County

Askew, Wade, House (Spanish Revival Residences in Mobile MPS), 103 Florence Pl., Mobile, 91000858

Fearn, George, House (Spanish Revival Residences in Mobile MPS), 1806 Airport Blvd., Mobile, 91000855

Levy, George, House (Spanish Revival Residences in Mobile MPS), 107 Florence Pl., Mobile, 91000861

Megginson, Ernest, House (Spanish Revival Residences in Mobile MPS), 143 Florence Pl., Mobile, 91000860

Morrison, James Arthur, House (Spanish Revival Residences in Mobile MPS), 159 Hillwood Rd., Mobile, 91000863

Paterson, J. E., House (Spanish Revival Residences in Mobile MPS), 118 Florence Pl., Mobile, 91000859

Spotswood, Robert L., House (Spanish Revival Residences in Mobile MPS), 1 Country Club Rd., Mobile, 91000854

VanderSys, Arthur, House (Spanish Revival Residences in Mobile MPS), 119 Florence Pl., Mobile, 91000857

VanderSys, Jacob, House (Spanish Revival Residences in Mobile MPS), 129 Florence Pl., Mobile, 91000862

Walker, Joseph M., House (Spanish Revival Residences in Mobile MPS), 104 Florence Pl., Mobile, 91000856

Missouri

Jasper County

St. Peter the Apostle Catholic Church and Rectory, 812 Pearl St., Joplin, 91000851

Pettis County

Missouri State Fairgrounds Historic District, Roughly bounded by US 65, Co. Rd. Y, Clarendon Rd. and the Missouri—Kansas—Texas RR tracks, Sedalia, 91000853

South Dakota

Brookings County

Experimental Rammed Earth Wall, Medary Ave. behind Dean of Agricultural and Biological Sciences House, South Dakota State University campus, Brookings, 91000850

Woodbine Cottage Experimental Rammed Earth Wall, W of jct. of 10th St. and Medary Ave., South Dakota State University campus, Brookings, 91000849

Brown County

Werth, Gustav and Mary, House, 1502 N. Dakota St., Aberdeen, 91000846

Codington County

Florence Methodist Church, Jct. of 5th St. and Dolly Ave., Florence, 91000848

Kranzburg School District No. 5, Hasting St., Kranzburg, 91000847

Texas

Cameron County

The Gem, 400 E. 13th St., Brownsville, 91000852

[FR Doc. 91–13873 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–70–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 proposal for the collection of information to the Office of Management and Budget (OMB) for review.

PROPOSE OF INFORMATION COLLECTION: The proposed information collection is for use by the Commission in connection with investigation No. 332–310, Alfalfa Products: Conditions of Competition Between the U.S. and Canadian Industries, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

SUMMARY OF PROPOSAL:

(1) *Number of forms submitted:* One.

(2) *Title of form:* Processors and Exporters Questionnaire: Alfalfa Products.

(3) *Type of request:* New.

(4) *Frequency of use:* Nonrecurring.

(5) *Description of respondents:* Firms which process or export alfalfa products.

(6) *Estimated number of respondents:* Processors: 57, based on an estimated response rate of 60 percent. Exporters: 45, based on an estimated response rate of 60 percent.

(7) *Estimated total number of hours to complete the forms:* The Commission estimates a response time of 30 hours per questionnaire.

(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 proposed form and supporting documents may be obtained from David L. Ingersoll (USITC tel. no. (202) 252–1309). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Marshall Mills, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

SUBMISSION OF COMMENTS: Comments should be submitted to OMB within 2 weeks of the date this notice appears in the **Federal Register.** If you are unable to submit them promptly you should advise OMB within the 2 week period of your intent to comment on the proposal. Mr. Mill's telephone number is (202) 395–7340. Copies of any comments should be provided to Charles Ervin (United States 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 TDD terminal on (202) 252–1810.

Dated: June 6, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–13935 Filed 6–11–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–324]

Designation of Additional Commission Investigative Attorney

In the matter of certain acid-washed denim garments and accessories, including jeans, jackets, bags and skirts;

Notice is hereby given that, as of this date, Sarah C. Middleton, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation in addition to Kent R. Stevens, Esq.

The Secretary is requested to publish this notice in the **Federal Register.**

Dated: May 31, 1991.

Respectfully submitted,

Lynn L. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW. Washington, DC 20436.

[FR Doc. 91–13932 Filed 6–11–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731-TA-515 (Preliminary)]

Portable Electric Typewriters From Singapore

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Singapore of portable electric typewriters (PETs),[2] provided for in subheadings 8469.10.00 and 8469.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 18, 1991, a petition was filed with the Commission and the Department of Commerce by Brother Industries (USA), Inc., Bartlett, TN, alleging that an industry in the United States is materially injured and is threatened with material injury by reason of LTFLV imports of portable electric typewriters from Singapore. Accordingly, effective April 18, 1991, the Commission instituted preliminary antidumping investigation No. 731-TA-515 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 25, 1991 (56 FR 19125). The conference was held in Washington, DC, on May 9, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 3, 1991. The views of the Commission are contained in USITC Publication 2388 (June 1991), entitled "Portable Electric Typewriters from Singapore: Determination of the Commission in Investigation No. 731-TA-515 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 7, 1991.

By Order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 91-13934 Filed 6-11-91; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.1(f)).

[2] For purposes of this investigation, PETs are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: They must (1) Be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate their portability; (2) Be electric, regardless of source of power; (3) Be comprised of a single, integrated unit (e.g., not in two or more pieces); (4) Have a keyboard embedded in the chassis or frame of the machine; (5) Have a built-in printer; (6) Have a platen (roller) to accommodate paper; and (7) Only accommodate their own dedicated or captive software.

PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) Seven lines or more of display; (2) more than 32K text memory; (3) the ability to perform 'block move;' and (4) a 'search and replace' function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation. The PETs subject to this investigation are those provided for in HTS subheading 8469.21.00 and those with text memory (automatics or PATs) provided for in HTS subheading 8469.10.00.

[Inv. No. 731-TA-472 (Final)]

Determination; Silicon Metal From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from The People's Republic of China (China) of silicon metal,[2] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also unanimously determines, pursuant to section 735(b)(4)(A) of the act (19 U.S.C. 1673d(b)(4)(A)), that critical circumstances do not exist with respect to imports of silicon metal from China; thus, the retroactive imposition of antidumping duties is not necessary.

Background

The Commission instituted this investigation effective February 4, 1991, following a preliminary determination by the Department of Commerce that imports of silicon metal from China were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's final investigation and of a public hearing to be held in connection therewith, was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of February 27, 1991 (56 FR 8216). The hearing was held in Washington, DC, on April 25, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 3, 1991. The views of the Commission are contained in USITC Publication 2385 (June 1991), entitled "Silicon Metal From The People's Republic of China: Determination of the Commission in Investigation No. 731-TA-472 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 4, 1991.

Before the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-13933 Filed 6-11-91; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 284.61.000 of the HTS) is not subject to this investigation.

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343-11344. The applications are governed by 49 CFR part 1182, as revised in Pur., Merger & Cont.-Motor Passenger & Water Carriers, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

No. MC-F-19332, filed April 8, 1991. Peterson Manufacturing Company—Control Exemption—Renzenberger, Inc. and Mid-American Van Pool, Inc. Petitioners' representatives: Alex

Lewandowski, 4220 Madison Avenue, Kansas City, MO 64111. Peterson Manufacturing Company (Peterson), a noncarrier, seeks to acquire control of Renzenberger, Inc. (RI) and Mid-American Van Pool, Inc. (MAVP). Renzenberger holds authority in No. MC–170517 as a: (1) Common carrier to transport passengers, in charter and special operations, between points in the United States; and (2) contract carrier to transport train crews, between points in the United States, under continuing contract(s) with railroad companies. MAVP holds authority in No. MC–238671, as a common carrier to transport passengers, in charter and special operations, (1) between points in California, Nevada, Utah, Wyoming, Colorado, Nebraska, Kansas, Oklahoma, Texas, Iowa, Missouri, Arkansas, Louisiana, Illinois, and Tennessee; and (2) beginning and ending at points in the same 15 states and extending to points in the United States (except Alaska and Hawaii).

Don R. Armacost owns 50 percent (the largest block) of the stock of Peterson, and upon Peterson's acquisition of the stock of RI and MAVP, Mr. Armacost, a noncarrier individual will be in control of two regulated motor carriers subject to our jurisdiction.

Decided: June 4, 1991.

By the Commission, Motor Carrier Board.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13949 Filed 6–11–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31889]

Burlington Northern Railroad Co., Illinois Central Railroad Co., and Union Pacific Railroad Corp.—Trackage Rights Exemption—Joppa and Eastern Railroad Co.

Joppa and Eastern Railroad Company (J&E) has agreed to grant: (i) Local trackage rights to Burlington Northern Railroad Company (BN), Illinois Central Railroad Company (ICR), and Union Pacific Railroad Corporation (UP) over approximately 2.5 miles of its line between those portions of the north and south wyes leading from the BN main line, east of Kelley, and milepost 2.52, at Neff, in Massac County, IL; (ii) local trackage rights to UP over the rail line and related properties J&E leases from Missouri Pacific Railroad Company between mileposts 359.5 and 362, north of Joppa, in Massac County (the Leased Track); and (iii) overhead trackage rights to BN and ICR over the Leased Track. The primary purpose of the transaction is to allow BN, ICR, and UP to use J&E's owned and leased track to serve the facility of Electric Energy, Inc., near Joppa. The trackage rights were to be consummated on June 3, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John R. Molm, Troutman, Sanders, Lockerman & Ashmore, 127 Peachtree Street, suite 1400, Atlanta, GA 30303–1810.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: June 5, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13948 Filed 6–11–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31884]

The Metropolitan Railway Co., Inc.—Corporate Family Transaction Exemption—the Indiana & Ohio Railway Co.

The Metropolitan Railway Company, Inc. (MRC), and The Indiana & Ohio Railway Company (IORY) filed a notice of exemption for MRC to lease to IORY its entire line of railroad, the Blue Ash Secondary, between milepost 49.5#, at Cincinnati, OH, and milepost 50.5#, at Norwood, OH, including the McCullough Yard track, a total distance of approximately 1 mile.

MRC and IORY are wholly-owned subsidiaries of The Indiana & Ohio Rail Corp. (I&O). The proposed transaction, which was to be consummated on or about May 28, 1991, is intended to facilitate the interchange of traffic between the I&O system and CSX Transportation, Inc., and other carriers.

Because MRC and IORY are members of the same corporate family, the lease falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family.

As a condition to use of this exemption, any employees affected by the lease will be protected by the labor conditions set forth in Mendocino Coast Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978), and 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Robert L. Calhoun, Sullivan & Worcester, suite 806, 1025 Connecticut Avenue, NW., Washington, DC 20036.

Decided: June 6, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13950 Filed 6–11–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Advisory Committee; Establishment

AGENCY: Mine Safety and Health Administration (MSHA).

ACTION: Notice of establishment of advisory committee.

SUMMARY: The Secretary of Labor has determined that it is in the public interest to establish an advisory committee to make recommendations concerning the conditions under which air coursed through the belt entry could be safely used in the face areas of underground coal mines. The committee will provide a collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved.

DATES: Comments must be received on or before June 27, 1991.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; Mine Safety and Health Administration; room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published in the **Federal Register** (53 FR 2382) a proposed rule to revise the Agency's existing ventilation standards for underground coal mines. Included in the proposal were provisions to allow the use of belt entry air to ventilate the face areas of underground coal mines. Public hearings

were held in June 1988 and the record closed on August 19, 1988.

In 1989, the Assistant Secretary for Mine Safety and Health requested a special study to review safety and health questions surrounding the ventilation of belt conveyor entries. The report, released in August 1989, reviewed major aspects of the issues surrounding the use of air coursed through belt conveyor entries to ventilate working places in underground coal mines. As many of the findings and recommendations made in the report relate to issues in the ventilation rulemaking, MSHA reopened the rulemaking record to receive public comment on the relevant portions of the report and held a seventh public hearing in April 1990. The ventilation rulemaking record closed on May 18, 1990.

In accordance with the provisions of the Federal Advisory Committee Act and after consultation with the General Services Administration, I have determined that the establishment of an advisory committee on the use of belt entry air to ventilate the face areas of underground coal mines is in the public interest. I am therefore establishing the committee under sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and the Federal Advisory Committee Act.

The committee will make recommendations to me with respect to conditions under which belt air could be safely used in the face areas of underground coal mines. These recommendations will be based on draft provisions developed by MSHA during the ventilation rulemaking, and other technical data.

As required by section 102(c) of the Mine Act, the majority of the committee will be composed of individuals who have no economic interest in the mining industry and who are not operators, miners, or officers or employees of the Federal government or any State or local government. There will be nine committee members: Two representing labor, two representing industry and five persons with no economic interest in the industry.

The committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the committee to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at the address listed above.

Dated: June 6, 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–13913 Filed 6–11–91; 8:45 am]

BILLING CODE 4510–43–M

LEGAL SERVICES CORPORATION

Grant Award for Provision of Civil Legal Services to Migrant Farmworkers

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant award.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a grant to provide civil legal assistance to LSC-eligible migrant farmworker clients in Tennessee. Pursuant to the Corporation's announcement of funding availability in Volume 56, No. 49, pages 10577 and 10578 of the **Federal Register** of March 13, 1991, a total of $12,527 will be awarded to Legal Services of Upper East Tennessee.

This one-time grant is awarded pursuant to authority conferred by sections 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATES: All comments and recommendations must be received on or before the close of business on July 12, 1991, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants & Budget Division, Office of Field Services (202) 863–1837.

Date Issued: June 7, 1991.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 91–13947 Filed 6–11–91; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Opera-Musical Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on June 28, 1991 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–10 a.m. and 4:30 p.m.–5:30 p.m. The topics will be welcoming remarks, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this section will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 6, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–13961 Filed 6–11–91; 8:45 am]

BILLING CODE 7537–01–M

President's Commission on Arts and Humanities; Meeting

Thursday, June 27 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Meeting XXIII. This meeting has been scheduled in the President's Committee Conference Room, #527, 1100 Pennsylvania Avenue, NW., in Washington, DC. This is a regularly scheduled meeting at which The Honorable Roger Porter, Assistant to the President for Economic and Domestic Policy will address the Committee on The President's Education Agenda. In addition, presentations will be made by Ambassador Henry Catto, Director of the United States Information Agency, and The Honorable Susan Kent, Director of the Institute of Museum Services. The plenary session is expected to adjourn at 11:30 a.m.

The President's Committee on the Arts and the Humanities was created by executive order of the President in 1982. Its primary goal is to raise visibility and private support for cultural activities.

Please call 202–682–5409 or 212–512–5957, if you expect to attend, as space is limited.

Dated: June 7, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer, Council & Panel Operations National Endowment for the Arts.

[FR Doc. 91–13962 Filed 6–11–91; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 17, 1991 through May 31, 1991. The last biweekly notice was published on May 29, 1991 (56 FR 24204).

Notice of Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 12, 1991 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 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, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 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 a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

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, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., 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) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the 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 factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530 Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: April 30, 1991

Description of amendment requests: The radioactive gaseous effluent instrumentation is used to monitor and control the releases of radioactive materials in gaseous effluents. The proposed amendment would add a footnote to Technical Specification Table 4.3-8, Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements, to allow the use of light emitting diodes (LED) as check sources for four noble gas activity monitors. Currently, the use of the LED check source is not permitted under the literal interpretation of the SOURCE CHECK definition (Technical Specification 1.33), which requires the channel sensor to be exposed to a source of increased radioactivity. However, the detector vendor manual states "The LED check source, when activated by an operator, makes it possible to confirm the detector's operability." Therefore, the use of LED check sources may be consistent with the vendor manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment permits the use of the built-in LED check sources for Technical Specification monitors RU-12 (Gaseous Radwaste System Noble Gas Activity Monitor), RU-141 (Condenser Evacuation System Noble Gas Activity Monitor), RU-143, (Plant Vent System Noble Gas Activity Monitor) and RU-145 (Fuel Building Ventilation System Noble Gas Activity Monitor). The vendor manual states, "The LED check source when activated by an operator, makes it possible to confirm the detector's operability." Use of the LED check sources provides an alternative method for the qualitative assessment of channel response for these four noble gas activity monitors and does not change the source check requirement nor surveillance interval. The credible failure mechanisms of beta scintillator detectors (i.e., failure of the photomultiplier tube, preamplifier, cabling, microcomputer, and high voltage power supply) would be detected with equal confidence by the LED or isotopic check sources. The use of LED check sources does not affect assumptions contained in plant safety analyses, nor does the use affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed amendment does not affect the probability or consequences of accidents previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed amendment permits the use of LED check sources in lieu of isotopic check sources, but does not change the intent of the Technical Specification requirements. The LED check sources qualitatively assess the detector channel response. Use of LED check sources does not alter the design of the facility nor the operation of the detectors. There are no credible failures of the detectors that would not be detected with equal

confidence by the LED or isotopic check sources. Therefore, failure mechanisms of the monitors remain unchanged, and hence the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed amendment, permitting the use of LEDs in lieu of isotopic check sources, makes no changes to safety limits, setpoints, or design margins at PVNGS and, therefore, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 1, 1991

Description of amendments request: The amendment proposed two changes to the Technical Specifications to meet the requirements of Generic Letter (GL) 88-01 regarding Intergranular Stress Corrosion Cracking (IGSCC) near weldments in Boiling Water Reactor (BWR) piping. The first is the addition of a Surveillance requirement in section 4.0.5 for the inservice inspection program of piping identified in GL 88-01 to be in accordance with NRC staff guidelines. The second is the establishment of a new Limiting Condition for Operation (LCO) and Action requirement for the reactor leakage limit. The LCO places a two gpm limit on the increase of unidentified reactor coolant leakage over a 24-hour period. The action requirement allows a 4-hour period to identify the source of the leakage before commencing an orderly shutdown of the unit. The unit must be in hot shutdown within the next 12 hours and cold shutdown within the following 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because: I21The proposed amendment to the applicability section of the Technical Specifications (paragraph 4.0.5) commits the station to conducting the inservice inspection program in accordance with the requirements of Generic Letter 88-01 or in accordance with alternate measures approved by the NRC staff. This revision is administrative in nature and does not affect any accident initiators or initial assumptions used in the plant accident analyses.

Leakage detections systems for the reactor coolant system are provided to alert the operator when leakage rates above normal levels are detected. The proposed amendment to the limiting conditions for operation (LCO) and action requirements for the reactor coolant system operational leakage limits provides more stringent requirements for detection of unidentified leakage within the primary containment. This additional restriction will enhance the ability for early detection of small flaws in the reactor coolant pressure boundary, thereby, reducing the potential for a significant failure of the pressure boundary. This revision does not adversely affect any of the accident initiators or initial assumptions used in the plant accident analyses.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed amendments do not involve any changes to the facility or the operation of the facility as described in the UFSAR. The amendments provide enhancements to the program for early detection of pressure boundary leakage and do not create the possibility of any unanalyzed event.

The proposed changes do not involve a significant reduction in a margin of safety because:

The proposed amendment to paragraph 4.0.5 of the Technical Specifications commits the station to conducting the inservice inspection program in accordance with the requirements of Generic Letter 88-01 or in accordance with alternate measures approved by the NRC staff. This revision is purely administrative in nature and has no affect on the margin of safety.

The proposed amendment to the LCO and action requirements for the reactor coolant system operational leakage limits provides more stringent requirements for detection of unidentified leakage within the primary containment. This additional restriction may help to enhance the ability for early detection of small flaws in the reactor coolant pressure boundary, thereby, reducing the potential for a significant failure of the pressure boundary. This proposed amendment will not have an adverse affect on the margin of safety. The enhanced ability for early detection of unidentified leakage may actually increase the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 2, 1991

Description of amendments request: The Technical Specification changes accomplish two purposes. The first is to eliminate the requirement to use the Rod Sequence Control System (RSCS) and replace it with the requirement to use the Rod Worth Minimizer (RWM) for rod pattern control. Second, it reduces the Low Power Setpoint (LPSP) for turning off the RWM from 20 percent power to 10 percent power. An additional requirement for the RWM is being added to Technical Specification 3.1.4.1 which will prevent reactor startup if the RWM is inoperable. These changes are based on the NRC staff's previous approval of Amendment 17 to the General Electric document NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel," Revision 8.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

1. An extensive probabilistic study performed by the NRC staff (letter and enclosure from from B.C. Rysche, NRR to R. Fraley, ACRS dated June 1, 1976, "Generic Item II A-2 Control Rod Drop Accident (BWRs)') in conjunction with the extensive use of BPWS rod patterns, and improved RWM reliability demonstrates that the RWM can be considered an acceptable system of rod pattern control in protecting against the Design Limit Rod Drop Accident (RDA). Thus, the RSCS is redundant in function to the RWM. Eliminating the RSCS does not eliminate the control rod pattern monitoring function performed by the RWM. The probability of an accident occurring is not increased, since RSCS does not affect the potential of a rod drop event and the proposed changes do not remove control rod

drive coupling checks or instrument response verifications. When operation proceeds in accordance with this change, the probability or consequences of an accident is not increased.

2. Improved methodologies in the RDA analysis methods (e.g. BNL-NUREG 28109, "Thermal Hydraulic Effects on Control Drop Accident in a BWR, October 1980) have shown that when above 10 percent power no RDA can occur with the peak fuel enthalpy being greater than the RDA design limit of 280 cal/gm. The installed sensors for RWM LPSP actuation are capable of providing actuation within the revised limits. When operation proceeds in accordance with this change, the probability or consequences of an accident is not increased.

3. The RSCS duplicates the function of the RWM. While the RWM is operable, the RSCS is not needed since the RWM prevents control rod pattern error. In the event the RWM is out of service, the proposed Technical Specifications require that control rod movement and compliance with the prescribed control rod pattern be verified by a second licensed operator or technically qualified member of the technical staff. The verification process is controlled procedurally to ensure a high quality, independent review of control rod movement. All of these actions demonstrate consistency and applicability to those conclusions reached in the NRC SER, and substantiate the conclusion that there will be no increase in the consequences of an RDA as previously evaluated as a result of eliminating the RSCS and lowering the RWM LPSP.

The proposed changes do not create the possibility of a new or different kind of accident previously evaluated because:

1. The only protective function of the RSCS is preventing the Design Limit RDA. Eliminating the RSCS does not change any other plant protective functions or systems, thus the change does not create any new accident mode.

2. The only protective function of the RWM is preventing the Design Limit RDA. Lowering the setpoint of the RWM from 20 percent power to 10 percent power does not change any other plant protective functions or systems, thus the change does not create any new accident mode.

The proposed changes do not involve a significant reduction in the margin of safety because:

1. Elimination of the RSCS will not reduce the margin of safety. The RWM will protect against the peak fuel enthalpy being greater than the RDA design limit of 280 cal/gm in the event of a control rod drop. The consequences of transients or accidents are not increased by this change beyond those previously evaluated and accepted at LaSalle Station.

2. Lowering the setpoint of the RWM from 20 percent power to 10 percent power will not reduce the margin of safety. Calcuations performed by GE and BNL have shown that even with the maximum single control rod position error, and most multiple error patterns, above 10 percent power no RDA can occur with the peak fuel enthalpy being greater than the RDA design limit of 280 cal/gm in the event of a control rod drop. The consequences of transients or accidents are not increased by this change beyond those previously evaluated and accepted at LaSalle Station.

3. GE has provided technical justification for the proposed changes in Topical Report NEDE-24011-P-A and associated references which justify the acceptability of the proposed changes. The NRC has reviewed and accepted the GE analysis and provided guidelines for licensees wanting to make the changes proposed in NEDE-24011-P-A and approved in the NRC SER issued December 27, 1987 to J.S. Charnley of General Electric. The proposed changes are consistent with those approved in the NRC SER and the guidelines set forth therein. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 24, 1991

Description of amendments request: The amendment to the Technical Specifications (TSs) proposes two changes. The first is to add to the specifications allowed outage times (AOT) for the scram discharge volume (SDV) drain and vent valves. AOT's for these valves are currently not included in the TSs for LaSalle, but are included in the TSs for other BWR plants of similar vintage. The second change is to remove TS 4.1.3.1.4.b which covers SDV instrumentation because the surveillances, action requirements, and AOT are adequately covered under RPS instrumentation (TS 4.3.1.1) and Control Rod Block instrumentation (TS 4.3.6).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of LaSalle County Station, Units 1 and 2 in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The establishment of an allowed outage time (AOT) for the scram discharge volume (SDV) vent and drain valve will not significantly increase the probability of an accident previously evaluated. The proposed AOT introduces a minor increase in the risk of a loss of coolant via the SDV vent and/or drain valve pathway. However, this event can only occur if the redundant valve should fail to close after a reactor scram. The probability of such an event is reduced by the use of redundant valves in the pathway. Therefore, the proposed AOT does not involve a significant increase in the probability of an accident as previously evaluated for LaSalle Station.

The consequences of an accident previously evaluated are not significantly increased by creating the AOT for the SDV vent and drain valve. As previously mentioned, the proposed AOT for the SDV system increases the risk of a loss of coolant via the SDV vent and/or drain valve pathway. However, the volume of coolant lost via this pathway is relatively small. Also, this event can only occur following a reactor scram. The primary concern associated with a SDV vent and/or drain valve failure to close following a reactor scram is secondary containment contamination. Therefore, the consequences of an accident previously evaluated is not significantly increased.

If any of the SDV vent or drain valves fail closed the SDV will fill as a result of normal control rod drive leakage. The increasing level will cause successively an alarm, a control rod block and finally a reactor scram if action is not taken to reopen the valves and drain the SDV. The reactor scram will occur while there is still enough volume remaining in the SDV to ensure a full reactor scram. Therefore, the ability to shut the reactor down under this failure mode is not impaired.

Deletion of Specification 4.1.3.1.4.b which contains the channel functional test requirements for SDV level detector instruments does not increase the probability or consequences of a previously evaluated accident. The requirements are either obsolete or redundant to other technical specification requirements.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The establishment of an AOT does not involve any changes to the facility or the operation of the facility as described in the UFSAR. Surveillance requirements for the SDV level instrumentation are covered under the RPS and control rod block instrumentation Technical Specification requirements.

3. Involve a significant reduction in the margin of safety because:

Establishment of an AOT where none currently exists may result in a small increase in risk, however it is expected that this increase will be offset by the reduction of risk to plant safety resulting from a reduced number of unnecessary plant shutdowns.

The surveillance requirements for the SDV level instruments are adequately addressed

in the RPS and control rod block instrumentation specifications. Therefore deletion of specification 4.1.3.1.4.b will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 15, 1991

Description of amendments request: The amendment would revise the Technical Specifications to incorporate section 4.0.5 from the Westinghouse Standard Technical Specifications relating to inservice inspection and testing of ASME components, pumps, and valves. Other conforming changes are proposed for the surveillance requirements of the applicable components, pumps, and valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves the incorporation of Specification 4.0.5 requirements. The change does not result in any hardware changes. The frequency at which pump and valve surveillances are performed is not assumed in the initiation of any analyzed event. The role of these pumps and valves is in the mitigation of design basis accidents and transients. However, the acceptance criteria of the IST program, which are at least as restrictive as existing Technical Specification requirements and in most cases are more restrictive, will ensure that at least an equivalent level of operational readiness is provided by this change for the affected pumps and valves. Therefore, accident analyses assumptions reflected in the affected surveillance requirements will still be verified on a frequency sufficient to ensure that the assumptions are reliably maintained. Additionally, the relocation of surveillance details to the IST program or its implementing procedures (controlled by 10 CFR 50.59) will not increase the probability or consequences of a previously evaluated accident since adequate control of the requirements is provided by the 10 CFR 50.59 review process and ASME Section XI requirements incorporated by 10 CFR 50.55a(g). Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident previously evaluated?

The proposed change, which involves the incorporation of Specification 4.0.5 requirements does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

Does this change involve a significant reduction in a margin of safety?

The IST program requirements and implementing procedures have been developed to ensure component degradation is detected before the component is incapable of performing its intended safety function. Therefore, modifying the applicable Technical Specification pump and valve surveillance requirements will not involve a significant reduction in a margin of safety. Any reduction in a margin of safety is insignificant since the extension of the surveillance intervals is justified by application of more restrictive surveillance criteria or the extension is justified based on accepted industry practice and compliance with ASME Section XI as mandated by 10 CFR 50.55(a)g [50.55a(g)]. Additionally, the 10 CFR 50.59 process used to control changes to the IST program and procedures (containing the relocated pump and valve surveillance details) is more stringent in that more conservative questions than those asked by the 10 CFR 50.92 process must be addressed. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 15, 1991

Description of amendments request: The proposed amendment would revise Tables 3.14-1 and 4.14-1 of Technical Specification 3/4.14 to incorporate the new radiation monitoring instrumentation associated with Zion Station's new Technical Support Center (TSC) and delete the instrumentation associated with the former TSC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature. The intent is to revise the instrument numbers for the Technical Support Center (TSC) Radiation Monitors to reflect those that were installed in the new TSC. The new monitors will perform the same functions as the ones used in the old TSC which is consistent with the requirements described in both NUREG 0737 and 0696. The purpose of these monitors is to provide sufficient information to monitor and assess TSC habitablity [habitability]. The information obtained will be assessed with appropriate actions taken to ensure proper TSC habitability is maintained. The proposed amendment does not change or alter any current operator actions or requirements for the mitigation of any accident evaluated in the Zion Final Safety Analysis Report (FSAR). The addition of the automatic initiation of air filtration reduces the dependance upon operator action to ensure TSC habitability. These changes do not have any adverse impact on any assumed margins during an evaluated accident. Plant response to previously evaluated accidents will not be altered as a result of these changes. The probability for an evaluated accident is independent of the proposed changes. The instrumentation numbers and the automatic air filtration initiation feature are not related in any fashion to the initiation or mitigation of previously evaluated accidents. As such, the probability and consequences of previously evaluated accidents has remained unchanged.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves administrative changes to reflect new equipment part numbers (EPNs) and addition of an automatic initiation feature for emergency air filtration equipment. No changes in parameters governing normal

plant operation are involved. The new equipment which has been installed has the same capabilities as the equipment utilized in the old TSC. The automatic filtration feature does not create the possibility for a new or different kind of accident since spurious actuation will result only in unnecessary filtration and failure to automatically actuate will not preclude manual actuation.

The proposed change does not involve a significant reduction in a margin of safety.

These proposed changes do not alter the manner in which any safety related equipment is operated or maintained. There are no setpoint or operational limitations being altered as a result of these revisions. The inclusion of the corrected numbers and replacement instrumentation will provide added assurance that an adequate number of appropriate instruments are available to monitor required TSC habitability conditions in the event of an accident. The Surveillance requirements continue to establish specific actions to determine operability of the monitors. As such, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: April 2, 1990 and as amended September 27, 1990

Description of amendment request: The proposed license amendment would modify the Palisades Plant Technical Specifications (TS) by deleting the responsibility of industry experience review from the Plant Safety and Licensing Group, and assigning it to the Plant Review Committee. Additionally, various editorial corrections are proposed.

Specifically, the proposed amendment would correct typographical errors in TS Table 3.6.1, Containment Penetrations and Valves, TS Section 3.25.1, Alternate Shutdown System, Limiting Condition for Operation, and TS Section 6.10.2.i, Administrative Controls - Record Retention.

Also, the responsibility for the program to examine nuclear industry operating experiences has been removed from the Plant Safety and Licensing organization and has been reassigned to the Plant Review Committee under the Engineering and Maintenance Manager. This change affects TS Section 6.5.3.1, Plant Safety and Licensing - Function, TS Section 6.5.1.6.i, Plant Review Committee - Responsibilities, and TS Section 6.5.1.7.a, Plant Review Committee - Authority.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

These changes as proposed are editorial in nature. Proposed changes C & D will have no impact on the industry operating experience review or safety review functions at the plant. The changes have no effect on the probability of occurrence or consequences of an accident, nor has the possibility of an accident or malfunction of a different type been created because they do not effect the plant configuration nor the plant operating requirements.

The margin of safety as defined in the basis for the Technical Specifications will not be affected because no margin of safety is defined for the Administrative Controls Section of the Technical Specifications, and the proposed changes are editorial corrections.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Duke Power Company, Docket No. 50-369, McGuire Nuclear Station, Unit 1, Mecklenburg County, North Carolina

Date of amendment request: April 18, 1991

Description of amendment request: The Technical Specification amendment request would revise TS 5.3.1 to enable the use of two demonstration assemblies during McGuire Unit 1 cycles 8, 9, and 10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed change will not involve a significant increase [in] the probability or consequences of any accident previously evaluated in the FSAR.

The test assemblies with the zirconium-based claddings are mechanically and thermal-hydraulically similar to the remainder of the reload batch and the rest of the core, so no failure probability is increased, nor is any operational practice changed which could introduce a new initiator of an accident. The only credible event which could occur as a result of this demonstration is clad failure of the test fuel rods. The number of fuel rods involved is such a small percentage of the core inventory that even a postulated failure of all the demonstration fuel rods from a cause related to the demonstration would not result in dose consequences greater than existing limits. A failure of the fuel rods from a cause not related to the demonstration would not result in consequences greater than those which would have occurred had the assemblies not been demonstration assemblies.

2) The proposed change will not create the possibility of a new accident not previously evaluated.

The mechanical and thermal-hydraulic similarity of the test assemblies to the remainder of assemblies in the core precludes the credible possibility of creating any new failure mode or accident sequence. The use of the demonstration assemblies does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors[.]

3) The proposed change will not involve a significant decrease in a margin of safety.

The demonstration assemblies meet the same design bases as the remainder of assemblies in the core. Existing reload design and safety analysis limits are maintained, and the FSAR analyses are bounding. No special setpoints or other safety settings are required as a result of the use of these two test assemblies. The assemblies will be placed in locations which will not experience limiting peak power conditions.

Conclusion

The proposed change has been shown in the accompanying Justification and Safety Analysis (see Attachment II) [of licensee's submittal] to be transparent in terms of the operation of the plant. No new operational or safety considerations will be created, and no procedures or practices will be changed. The demonstration assemblies will be mechanically, neutronically, and thermal-hydraulically similar to the rest of the assemblies in the reload batch and the remainder of the core.

Based upon the above analysis, it is concluded that the proposed change will not involve a Significant Hazards Consideration.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 11, 1991 as supplemented May 20, 1991

Description of amendment request: The proposed TS amendments revise the value of the required control rod drop time from 3.3 seconds to 2.2 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Power Company has made the determination that this proposed amendment does not create a Significant Hazards Consideration, as defined by the criteria of 10CFR 50.92. These criteria ensure that operation of the facility in accordance with the proposed amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no change in the probability of any accident. The plant is not being modified in any way, except that the rod drop time will be more restrictive. The speed of the control rod drop is not an initiator of any accident.

The consequences of any accident will still meet the applicable acceptance criteria, so the consequences are acceptable. The allowable rod drop time is more conservative, in that it results in a more rapid shutdown of the reactor, and produces less severe consequences for all transients and accidents involving a reactor trip. The Chapter 15 analyses which are being performed in support of the upcoming M1C8 reload are expected to be submitted in early June.

2) Create the possibility of a new or different kind of accident from any previously evaluated.

This TS change will not require modifications to any equipment, components, or devices in the station. There is no need to functionally revise any procedures to operate or maintain the plant other than to substitute the new acceptance criteria in the appropriate rod drop timing test procedure. As such, the plant is not being modified in any way, and since the rod drop time will be more restrictive, there is no potential for a new or different kind of accident from any previously evaluated.

3) Involve a significant reduction in a margin of safety.

The transient and accident analyses which were performed in support of Unit 1 Cycle 8, which will be submitted for Staff review shortly, show that the acceptance criteria are met in all cases. Provided that the actual rod drop time is not greater than that assumed in the transient and accident analyses, the margin of safety is maintained. It should be noted that the rod drop time assumed in the analyses can be larger than the TS value and not impact the margin of safety. TS 3.1.3.4 ensures that the scram curves used in the safety analyses are validated by rod drop test results. The design drop time of 1.8 seconds remains unaffected, and the addition of the test review criteria provides additional assurance that anomalous drop behavior is investigated. The results of the analyses continue to meet the acceptance criteria of the Standard Review Plan.

NRC staff guidance provided in the Federal Register (48 FR 14870) regarding amendments not likely to involve a Significant Hazards Consideration stated that those amendments which constitute an additional limitation or restriction were not likely to involve an SHC. This proposed amendment clearly represents a more stringent Limiting Condition for Operation for TS 3.1.3.4. Therefore, this amendment request is considered to meet the Staff's guidelines for a NSHC determination.

Based on the above discussion, it can be concluded that the proposed change will not involve a Significant Hazards Consideration.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: February 7, 1991

Description of amendment request: The proposed amendments would delete the Organization charts from Section 6 - Administrative Controls, of the Technical Specifications (TSs) and associated bases, in accordance with staff guidance provided by NRC Generic Letter (GL) 88-06. Also, as recommended by GL 88-06, the licensee has added or modified statements to Section 6 of the TSs to provide the necessary administrative controls related to the licensee's organization. The organization charts are currently located in Chapter 13 of the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The amendments are administrative in nature and do not change the design or operation of the facility. The accident analyses are unaffected by this proposal, and thus the amendments do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The design and operation of the facility will not be changed by the amendments and no new modes of operation will be introduced by the changes. Therefore, the amendments do not create the possibility of a new or different type of accident from any previously evaluated.

The NRC GL 88-06 was issued to provide a greater flexibility to implement changes to the licensee organizational structure without reduction in plant safety. The licensee has addressed the particular requirements addressing administrative controls identified in GL 88-06. Therefore, the changes do not involve any reduction in margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied . Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29692

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: June 12, 1990 as supplemented by letter dated April 19, 1991. The June 12, 1990 submittal was published in the **Federal Register** on September 19, 1990 (55 FR 38600).

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3.4.9.3 relating to Overpressure Protection Systems (OPPS). Specifically, the amendment would increase the

maximum setpoint specified for the power-operated relief valves (PORVs), and would increase the enable temperature below which the OPPS shall be operable. The amendment would also modify TSs 3.4.1.6, 3.5.4.1.2, 4.1.2.4.2, and 4.5.3.2 and the footnotes associated with TSs 3.1.2.4 and 3.5.3 by replacing the specified temperature with a reference to the enable temperature specified in TS 3.4.9.3 Bases Sections 3/4 1.2, 3/4 4.9 and 3/4 5.2, 3/4 5.3, and 3/4 5.4 would also be revised to reflect the changes described above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely provide a revised setpoint for the PORVs to protect the reactor coolant system from low-temperature overpressure transients. The setpoint proposed would still prevent exceeding the temperature-pressure operating limits determined in accordance with Appendix G to 10 CFR Part 50. As such, the revised setpoint affords the same protection against low temperature overpressure transients as before.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the proposed changes would still provide protection to the reactor coolant system against brittle fracture.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes would still provide protection against brittle fracture of the reactor coolant system in accordance with Appendix G to 10 CFR Part 50.

Based on this review, it appears that the three criteria of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 9, 1991

Description of amendment request: The proposed changes to Arkansas Nuclear One, Unit 2 Technical Specification 3.1.3.1 and its associated bases would allow continued plant operation for 72 hours with more than one full length or part length Control Element Assembly (CEA) inoperable due to an electronic or electrical problem in the Control Element Drive Mechanism Control System (CEDMCS), provided that all affected CEAs remain trippable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Allowing 72 hours for diagnosis and repair associated with electronic or electrical malfunctions of the CEDMCS is acceptable, since the primary safety function of these CEAs (reactor trip) remains unaffected. The 72 hour allowance is considered justifiable in order to provide adequate time to effect repairs without undue exposure to any operational requirement to move the affected CEA group.

The proposed changes maintain the original requirements for CEA position, insertion limits, and surveillance requirements so that power and peaking distributions used in the safety analysis will remain unaffected. The proposed changes do not affect the ability of the CEAs to perform their intended safety function when a safety system setting is reached. Therefore, the consequences of accidents related to or dependent upon CEA operation will remain unaffected.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

There are no new failure modes or mechanisms associated with the proposed changes. These changes do not involve any modification in the operational limits or physical design of the involved systems. These changes will reduce the burden on the control room staff by allowing sufficient time for system repair.

(3) Involve a significant reduction in margin of safety.

These changes do not affect any Technical Specification margin of safety. These changes allow appropriate ACTION commensurate with the significance of the CEDMCS malfunction, while not subjecting the plant to a transient in response to malfunctions that do not affect the capability of the CEAs to perform their primary safety function.

Other Technical Specification limits for reactivity related items, such as shutdown margin and CEA insertion limits, will remain in effect to ensure that the safety margins are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 9, 1991

Description of amendment request: The proposed change revises Technical Specification (TS) 3.5.3.1 for the containment isolation valves. The proposed change deletes the requirements of TS 3.0.4 on mode changes, when the action statements that allow continued operation for an unlimited period of time are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The exemption of the application of Techncial Specification 3.0.4 to the containment isolation valves has no effect on the probability of an accident and does not significantly increase the consequences of an accident. The containment isolation valves prevent the offsite releases of radioactive material which could be present within the containment following an accident. Current Technical Specifications identify sufficient Technical Specification actions which can be taken should the containment isolation valves become inoperable during the applicable modes of operation. This ensures an adequate level of protection until the inoperable valve can be repaired. The proposed change allows the unit to enter operational modes if the actions have been met.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The containment isolation valves are utilized to mitigate the consequences of an accident. The proposed change allows entry

into the applicable operational mode if sufficient actions currently specified by the Technical Specifications are met. The Technical Specification actions currently allow continued operation for an inoperable valve when compliance with the Action Requirements is satisified. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change does not involve a significant reduction in a margin of safety since the isolation capability required by the ACTION statement of Specification 3.6.3.1 is in place, which allows continued operation if the actions are met. This...[exception] allows entry into a mode where these actions are applicable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 9, 1990 and March 15, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications to delete reference to the movable incore detector system (MICDS) and remove requirements for the associated containment penetration conductor over-current protective devices. The fixed incore detection system will remain and the containment penetrations will continue to be protected for overcurrent when in use.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operability of the movable incore detectors is not required for any accidents previously evaluated. All assumptions and results for previously evaluated accidents remain unchanged by the proposed amendment. Therefore, the alteration of the Technical Specification 3.3.3.2 definition for "operable incore detector" will not involve an increase in the probability or consequence of any accident previously evaluated.

The exclusion of the MICDS from the definition for "operable incore detector" means the mapping is to be accomplished by the fixed incore detector system only rather than a combination of the two. Since the fixed system provides the same information as the movable and the qualification criteria for Technical Specification 3.3.3.2 remains unchanged, the protection afforded by the limiting condition for operation remains unchanged. Consequently, the requested amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change narrows the definition in Technical Specification 3.3.3.2 of "operable incore detector" by excluding the alternate means to map a location using the MICDS. In the Bases to the Instrumentation section of the Technical Specifications, it states:

The OPERABILITY of the incore detectors with the specified minimum complement of equipment ensures that the measurements obtained from use of this system accurately represent the spatial neutron flux distribution of the reactor core.

The accurate representation of the spatial neutron flux distribution in the reactor core is best provided by the fixed incore detectors. The fixed detectors have always been used, since the MICDS is essentially unavailable. Therefore, the operability, as specified in the Bases, remains unchanged by this proposed amendment.

The limiting condition for operation has two requirements to verify incore detection system operability:

1. At least 75% of all incore detector locations shall be OPERABLE, and
2. A minimum of two quadrant symmetric incore detector locations per core quadrant.

These criteria make no distinction as to which detection system is to be employed to verify operability. The protection they provide is unchanged by the proposed amendment to the Technical Specification. Since this change does not affect any of the assumptions or results of the safety analyses, does not diminish the protection provided by the limiting condition for operation in the Technical Specifications, and does not change the bases, it does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., N.W., Washington, D.C. 20037

NRC Project Director: Theodore R. Quay

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: January 26, 1990, as supplemented January 15, 1991

Description of amendment request: The limiting conditions for operation and surveillance requirements for the Pressure Suppression Chamber in Hatch Unit 1 Technical Specification (TS) 3/4.7 and in Hatch Unit 2 TS 3/4.6.2.1 (and corresponding Action Statements and Bases) are being changed to clarify the method of determining the average suppression pool water temperature which is used to show compliance to TS operational temperature limits.

The original design of the Hatch pressure suppression pool included four temperature sensors installed in the lower elevation of the pool. The average of these four sensor readings was used to determine pool water temperature to ensure conformance to TS operational temperature limits.

Subsequently, 11 additional temperature sensors were installed at higher elevations in the pool to provide enhanced monitoring capability of this important plant parameter during normal, abnormal, and emergency operations.

The proposed change will modify the TS to require a more stringent method of monitoring the suppression pool water temperature. The TS will delineate that all 15 installed temperature sensors must be used to determine the average (bulk) water temperature. This bulk temperature is the numerical average of all 15 installed temperature sensors and is an assumed initial condition of many safety analyses. The TS surveillance requirements for both units will specify that the average pool temperature shall be determined using a weighted average of the suppression pool temperature sensors as described in the TS Bases. The TS Bases of both units will describe the methods used to determine the average suppression pool water temperature. Procedural changes have been implemented at Plant Hatch to require that a representative average of the 15 installed temperature sensors be used to determine the bulk pool temperature.

The proposed change will also modify the alternate methods of determining the average (bulk) suppression pool water temperature during different plant operating conditions in the event that

more than two of the 15 temperature elements become inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The heat capacity of the suppression pool, the existing suppression pool temperature limits, and the heat additions to the suppression pool assumed in accident/transient analyses are not impacted by this change.

The TS [will be] modified to require a more stringent method of monitoring temperature, consistent with current Plant Hatch procedural requirements.

The proposed change does not create the possibility of a new or different type of accident from any previously analyzed, because the new TS requirement simply increases the amount of instrumentation required to monitor average (bulk) suppression pool temperature. No new modes of operation are introduced by this change, and the pool temperature sensors provide monitoring and alarm functions only. Also, no physical changes are being made to the pool temperature monitoring system.

The proposed change does not involve a significant decrease in the margin of safety. Monitoring of the suppression pool temperature will be at least as accurate as before and reflects a better method of determining conformance to TS temperature limits. This method (using all of the available pool temperature sensors) is currently being utilized in plant procedures.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia *Date of amendment request:* October 9, 1990

Description of amendment request: The amendments would modify the Hatch Units 1 and 2 Technical Specifications (TSs) to reduce the trip setpoint allowable value for the low reactor water level scram and isolation functions by approximately 10 inches. This change would replace the current value of greater than or equal to 10 inches with greater than or equal to 0 inches in Hatch Unit 1 TS 2.1.A.2, Figure 2.1-1, Tables 3.1-1, 3.2-1, and 3.2-4, and their associated Bases; and in Hatch Unit 2 Tables 2.2.1-1, 3.3.2-2, and 3.3.3-2, and Figure B 3/4 3-1.

Reactor vessel water level instrumentation sends signals to the reactor protection system to initiate a reactor scram at low reactor vessel water level (Level 3) to prevent the water level from decreasing. These signals also close selected safety-related valves to isolate the primary containment and provides one of the signals needed to start an emergency core cooling system (ECCS).

This change would lower the current Hatch Unit 1 and Unit 2 trip setpoint/allowable value for the low reactor vessel water level scram and containment isolation functions from its current value of greater than or equal to 10 inches above reactor vessel instrument zero reference level to greater than or equal to 0 inches. Reactor vessel instrument zero reference water level is approximately 164 inches above the top of the active fuel. This level provides sufficient water inventory to assure that the fuel remains covered. Implementation of the lower water level scram setpoint would provide several additional seconds for operator actions in the event of a feedwater transient and may avert an unnecessary reactor scram.

The impact of a reduction in this Level 3 scram setpoint on the applicable transient and accident analyses, the containment isolations occurring at Level 3, and the Level 3 permissive signal to the ECCS start logic has been evaluated by the licensee. The licensee evaluations support changing the scram setpoint to 0 inches and indicate that the change will not impact the safety analysis. The change has an insignificant impact on the containment isolation function, and will not significantly decrease safety margins.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not significantly increase the probability or consequences of an accident previously evaluated. The change does lower (reduce) a trip setpoint; however, affected transient and accident analyses have been evaluated and the consequences of such events are not significantly increased. Lowering the scram water level setpoint will not increase the probability of a previously evaluated accident. It will provide several additional seconds for operator actions in the event of a loss of feedwater flow transient and may avert an unnecessary reactor scram.

The proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated. Only a trip setpoint is altered. No change to system or component maintenance or testing is proposed. The safety-related systems and components whose operation may be initiated by a Level 3 low water level signal will still operate in the same manner as they do currently, and no new failure modes are created. System/component design is unaffected.

The proposed change does not significantly reduce a margin of safety. The safety analyses dependent upon the scram water level trip (i.e., transient and ECCS analyses) have been evaluated, and safety margins are either negligibly impacted or not impacted at all.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Towbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 29, 1990; as supplemented January 29, March 6, 27, and 29, and April 19, 1991.

Description of amendment request: The proposed amendments would revise Technical Specifications (TSs) 3/4.1.2.5, 3/4.1.2.6, and 3/4.5.4 by reducing the minimum solution temperature inside the refueling water storage tank (RWST). Specifically, the minimum solution temperature for the limiting condition for operation would be reduced from 54 to 44 degrees F. The associated surveillance limit, which establishes a minimum outside air temperature at which the tank solution temperature must be verified daily, would be reduced from 50 to 40 degrees

F. Additionally, "(break flow equal to or greater than 3.0 square feet)" would be deleted in Bases 3/4.5.4, Refueling Water Storage Tank, which states that limits on RWST minimum volume and boron concentration ensure that... 3) the reactor will remain subcritical in the cold condition following a large break LOCA (break flow equal to or greater than 3.0 square feet) assuming complete mixing of the RWST, RCS, ECCS water and other sources of water that may eventually reside in the sump, post-LOCA with all control rods assumed to be out."

Other changes in the licensee's application and supplements have been previously noticed and are outside the scope of this notice. These other changes include those associated with the planned future use of Westinghouse VANTAGE-5 fuel.

Basis for proposed no significant hazards consideration determination: The proposed TS changes would provide additional operating flexibility by increasing the range of temperature within which the RWST will be available as an operable borated water source. The licensee has had Westinghouse reanalyze those safety analyses in the Final Safety Analysis Report (FSAR) which are sensitive to minimum RWST solution temperature as part of the VANTAGE-5 fuel transition study. These analyses include Inadvertent Operation of the Emergency Core Cooling System (ECCS) During Power Operation, Small Break Loss of Coolant Accident (LOCA), and Steam Generator Tube Failure. The licensee also reconfirmed the solubility of the RWST solution at the reduced temperature for the required range of boron concentration as part of the VANTAGE-5 program.

The change to the Bases to delete "(break flow equal to or greater than 3.0 square feet)" is a correction to the TSs. The phrase erroneously implies that a large break LOCA is defined as being greater than 3 square feet, whereas it is actually defined as larger than 1.0 square foot. This error is only in the text and did not affect the associated analyses. Since the correct values are given in the FSAR, the licensee prefers deletion rather than substitution of the correct value.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The reduced RWST minimum solution temperature does not increase the probability or consequences of an accident previously evaluated in the FSAR. The RWST solution temperature is a parameter used in the analysis of the Steam Generator Tube Failure and Small Break LOCA accidents. Since RWST solution temperature is only used in the analysis of these events, it does not contribute as an initiator or affect the probability of occurrence. The Inadvertent Operation of the ECCS During Power Operation accident involves injection of borated RWST water into the RCS. Although RWST injection is part of the event, the initiator of the event is either operator error or a false electrical actuation signal, which are unaffected by RWST solution temperature. Therefore, a change in the RWST minimum solution temperature will not increase the probability of occurrence of this event.

The consequences of an accident previously evaluated in the FSAR are not increased due to the reduced RWST minimum solution temperature. Small Break LOCA and Inadvertent Operation of the ECCS During Power Operation are not evaluated for radiological consequences since they are not limiting transients with respect to prediction of offsite doses. A revised analysis has been performed for the Steam Generator Tube Failure event as part of the VANTAGE-5 submittal which documents that all doses are within the Standard Review Plan acceptance criteria. Therefore, the consequences to the public resulting from any accident previously evaluated in the FSAR have not significantly increased.

The reduced RWST minimum solution temperature does not create the possibility of a new or different kind of accident than those already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures associated with the RWST are introduced as a result of the reduced allowable solution temperature. This reduced temperature condition in the RWST has no adverse effect and does not challenge the performance or integrity of any other safety related system. Therefore, the possibility of a new or different kind of accident is not created.

The margin of safety provided by the Technical Specifications relative to the RWST as a borated water source ensures that the reactor will remain subcritical under post-accident conditions. This inherently assumes that the defined boron concentration range will remain soluble at the RWST minimum solution temperature. By confirming that solubility at the reduced temperature is maintained, it is concluded that the operating envelope defined by the Technical Specifications continues to be bounded by the revised analytical basis. Therefore, the margin of safety provided by the RWST as a source of borated water is maintained and not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: May 14, 1991

Description of amendment request: The proposed amendment would change the alarm setpoint for the offgas pretreatment noble gas activity monitor in Technical Specification (TS) Table 3.3.7.1-1, "Radiation Monitoring Instrumentation," from the current value of 2.48 x 104 millirem/hour (mr/hr) to 3410 mr/hr. The non-conservative setpoint was identified during calculation reviews and was a result of calculation methodologies that did not consider the different operational modes of the offgas system and based the total steam to main condenser mass flow rate on 105 percent power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change would not crease the probability or consequences of a previously evaluated accident because:

The existing Technical Specification alarm setpoint is non-conservative. The proposed change will decrease the alarm setpoint, providing operations personnel with earlier detection of high radioactivity levels in the offgas system upstream of the holdup pipe.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed change will only reduce an alarm setpoint to a more conservative value. This change does not involve the potential for a new accident type, since plant design and alarm functions are unchanged.

3. The proposed change would not involve a significant reduction in the margin of safety because:

Margins of safety are enhanced since this change would reduce the offgas pretreatment monitor alarm setpoint to a more conservative value.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: George F. Dick, Jr., Acting Director

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: July 27, 1988, as supplemented May 21, 1991

Description of amendment request: The proposed amendment would extend the duration of the Nine Mile Point Unit 1 facility operating license to forty (40) years from issuance of the facility operating license. The currently licensed term for plant operation is 40 years commencing with the issuance of the construction permit. Accounting for the time required for plant construction, this represents an effective facility operating license term of only 36 years. This amendment would change the expiration date of the license such that the effective operation license term would be 40 years. The current expiration date of April 11, 2005, would, therefore, be changed to August 22, 2009.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This determination is based primarily on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated which maximize the inspectability of structures, systems and equipment. Surveillance and maintenance practices which are implemented in accordance with the ASME code and the facility Technical Specifications, provide assurance that any unexpected degradation in plant equipment will be identified and corrected. The reactor vessel and its internals were designed for forty (40) years of operation a full power with the 80% capacity factor (32 effective full power years). The reactor vessel surveillance capsules program provides a means of monitoring the radiation induced changes in the mechanical and impact properties of vessel materials in accordance with 10 CFR [Part] 50, Appendix H. This program provides additional assurance that adverse cumulative effects of power operation can be monitored and detected.

Aging analyses and Environmental Qualification have been performed for all electrical equipment important to safety in accordance with the requirements of Environmental Qualification Rule 10 CFR 50.49. This program included identification of qualified lifetimes for the required equipment and incorporation of maintenance requirements into appropriate plant procedures to maintain the qualification of the required equipment for the life of the plant. This qualification program provides assurance that electrical equipment important to safety will function as required if called upon to mitigate design basic events, regardless of the term of the license.

Safety-related mechanical equipment has been specifically addressed through the use of the Inservice Inspection Program and Inservice Testing Program. These programs, in conjunction with the above referenced programs, assure that mechanical equipment will be properly maintained throughout the life of the plant.

New programs have also been developed which will supplement our assessment of plant systems. Niagara Mohawk's new Erosion-Corrosion Review Program is one such example of how the additional measures are being taken to support plant life extension.

These interrelated programs at Nine Mile Point Unit 1 assure that the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment involves only a change in the expiration date of the Operating License. No safety analyses are affected. No new or different accident type is created. The accident analyses presented in the Updated Safety Analysis Report remain bounding.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed amendment involves only a change in the expiration date of the Operating License. No safety margins are affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC. 20005-3502.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 19, 1990 and supplements dated April 1, 1991 and May 20, 1991.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) sections 5.3.1 and 5.6.3 by removing the current maximum U-235 enrichment limit. TS 5.6.1 would be revised to allow storage of Westinghouse Standard or Vantage 5H fuel with a maximum enrichment limit of 4.55 weight percent (w/o) U-235 provided that the reference infinite multiplication factor (Kinf) for the fuel assemblies be less than or equal to 1.453 in unborated water at 68 degrees F, in core geometry. TS 5.6.1 would also be revised to refer to the updated final safety analysis report, section 9.1.2.1, in lieu of the reactivity uncertainty that is currently referenced.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Because of the conservative methods and assumptions used to evaluate the maximum possible assembly multiplication factor, there is more than reasonable assurance that no significant hazard based on criticality safety is involved in storing fuel assemblies with enrichments of up to 4.55 w/o U-235, with sufficient IFBAs [Integral Fuel Burnable Assembly], in the spent fuel storage racks under both normal and postulated accident conditions. The calculations used to determine the minimum number of IFBA rods required as a function of enrichment assured an assembly Kinf less than or equal to that of a fresh 4.05 w/o U-235 assembly with no IFBA under 0 ppm soluble boron conditions. The criticality accidents for 4.05 w/o U-235 fuel have been analyzed previously and there will be no increase in assembly Kinf.

Additionally, evaluations of reload core designs (using any enrichment) will be performed on a cycle by cycle basis as part of the Reload Safety Evaluation (RSE) process to ensure that the reactor operation is consistent with the current safety analysis. Therefore, there is no increase in the probability or consequences of any accident previously analyzed.

2. Create the possibility of a new or different kind of accident. The increase in enrichment to 4.55 w/o U-235 involved the performance of evaluations to envelope the corresponding changes in reactivity. Use of the reactivity equivalencing procedures ensures that the spent fuel pool criticality limits are not exceeded. Additionally, there are no proposed changes to the spent fuel rack geometry.

3. Involve a significant reduction in a margin of safety. As discussed above, for worst case assumptions the assembly Kinf values for a maximum enrichment of 4.55 w/o U-235, with a sufficient number of IFBA rods do not exceed those for the previously analyzed 4.05 w/o U-235. Therefore there are no reductions in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: January 24, 1991 as supplemented on May 16, 1991

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to reflect the proposed removal of the residual heat removal (RHR) isolation valve autoclosure interlock (ACI). TS 4.5.2.d would also be changed to eliminate the surveillance test of the autoclosure interlock function. The proposed TS would change the RHR suction relief valve setpoint upper limit (TS Section 3.4.9.3). It would also change the surveillance frequencies for verifying that RHR suction isolation valves are open and eliminate the requirement to verify that power is removed from the valve motor operators (TS sections 4.4.9.3.2(a) and (b)).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92 and has determined that:

1. The proposed change in the RHR suction relief valve setpoint upper limit does not involve a significant increase in the probability or consequences of an accident previously evaluated. The relief valve setpoint change has no effect on the probability of occurrence of a Reactor Coolant System (RCS) mass or heat addition transient which may require the RHR suction relief valves to protect the RHR system and the RCS from overpressurization. The consequences of a RCS mass or heat addition transient are not increased, as the relief valve setpoint change is intended to conservatively ensure that adequate overpressure protection is provided. The proposed change in the RHR suction relief valve setpoint is primarily attributable to the reanalysis of the RHR suction relief valve capacity by Yankee Atomic Electric Company in calculation SBC 383, "RHRS Overpressure Protection" dated June 26, 1990. NHY reviewed actual RHR suction relief valve setpoints determined during testing. The actual RHR suction relief valve setpoints were below 450 psig, thus RHR overpressurization would have been precluded in a mass or heat addition transient.

The proposed change in the surveillance frequencies for verifying that the RHR suction isolation valves RC-V22, RC-V23, RC-V87 and RC-V88 are open and eliminating the requirement to verify that power is removed from the motor operators for RC-V88 and RC-V22 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of the surveillance requirement is to ensure that the RHR suction isolation valves remain open when the RHR suction relief valves RC-V24 and RC-V89 are being used for RCS cold overpressure protection. The current requirements to remove power from RC-V22 and RC-V88 ensures that a single component failure (pressure transmitter) does not result in the isolation of both RHR trains from the RCS. The disabling of the RHR Autoclosure Interlock (ACI) circuitry eliminates the mechanism for autoclosure of the RHR suction isolation valves, thus the requirement to remove power from the valve operators is unnecessary and undesirable because the ability to expeditiously isolate the RHR system from the RCS is precluded in the event of an RHR system LOCA. The proposed 72 hour surveillance frequency for verifying that RC-V22, RC-V23, RC-V87 and RC-V88 are open when the RHR suction relief valves are being utilized for RCS cold overpressure protection is identical to the surveillance frequency for verifying that the Power Operated Relief Valves (PORV) isolation valves are open when the PORV's are being utilized for RCS cold overpressure protection. As stated above, the disabling of the RHR ACI circuitry eliminates the mechanism for autoclosure of the RHR suction isolation valves, thus the 12 hour open verification surveillance for RC-V23 and RC-V87 is overly restrictive and inconsistent with the open verification surveillance requirement for the PORV isolation valves. The current 31 day open verification surveillance for RC-V22 and RC-V88 is proposed to be changed to a 72 hour surveillance which is more conservative than the 31 day open verification and consistent with the open verification surveillance requirement for the PORV isolation valves.

2. The proposed change in the RHR suction relief valve upper limit will not create the possibility of a new or different kind of accident from any previously evaluated. The RHR suction relief valve function is to protect the RHR system from overpressurization during a RCS mass or heat addition transient. Additionally, the RHR suction relief valves may be utilized to provide RCS cold overpressure protection as provided by Technical Specification 3.4.9.3. The change in RHR suction relief valve setpoint upper limit will ensure that this overpressure protection function is provided. No change to the RHR suction relief valve lower limit setpoint has been proposed, therefore the probability of an inadvertent opening of the RHR suction relief valves is not increased. No new or different types of accidents will be created by the RHR suction relief valve setpoint upper limit change.

The proposed change in the surveillance frequencies for verifying that the RHR suction isolation valves RC-V22, RC-V23, RC-V87 and RC-V88 are open and eliminating the requirement to verify that power is removed from the motor operators for RC-V88 and RC-V22 does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change in the open verification surveillance frequency and the elimination of the requirement to verify the removal of power from the motor operators does not create a new or different kind of accident because the disabling of the RHR ACI circuitry eliminates the mechanism for autoclosure of the RHR suction isolation valves and concomitant loss of RHR cooling.

3. The proposed change in the RHR suction relief valve setpoint upper limit will not significantly reduce the margin of safety associated with the overpressure protection function of these valves. The proposed revised relief setpoint will maintain the margin of safety associated with the RHR suction relief valve overpressure protection function by assuring that the maximum opening setpoint does not exceed the maximum opening setpoint which has been conservatively analyzed. The actual RHR suction relief valve setpoint is verified as part of NHY Inservice Test Program requirements for these valves.

The proposed change in the surveillance frequency for verifying that the suction isolation valves RC-V22, RC-V23, RC-V87 and RC-V88 are open and eliminating the requirement to verify that power is removed from the motor operators for RC-V88 and RC-V22 does not involve a significant reduction in a margin of safety. The elimination of the requirement to verify that power is removed from the motor operators for RC-V88 and RC-V22 provides an increase in the margin of safety because these isolation valves along with RC-V87 and RC-V23 will have power available allowing their expeditious closure from the control room in the event of a RHR

system LOCA. The disabling of the RHR ACI circuitry eliminates the mechanism for autoclosure of these valves and concomitant loss of RHR cooling.

The NRC staff has reviewed the licensee's analysis and adds the following comments. There are no significant hazards considerations associated with lowering the relief valve setpoint pressure because the change is in the conservative direction to relieve at a lower pressure using the same relief mechanism as previously used, and the three criteria of 10 CFR 50.92 (c) are satisfied.

There are no significant hazards considerations involved in changing the RHR suction valve surveillance frequencies to 72 hours because the changes to accident probability or consequences and margin of safety are insignificant, and no new accident scenario is involved. Standard technical specifications (STS) allow up to 72 hours to provide the licensee an opportunity to repair a system and return it to service without changing operating modes or disturbing the plant's status. In the typical design, many safety systems have two redundant trains of equipment, each train being individually capable of performing the safety function. These redundant systems provide "single failure" protection—if one train fails the other train is completely capable of performing the safety function. In STS, if one of these trains is inoperable, the plant is allowed to continue in its operational mode for 72 hours. During this time, "single failure" protection has been lost for the safety system; however, the operable train still provides full capability if an accident occurs. The combined risk of an accident occurring within 72 hours and the operable train failing is very low. On the other hand, disturbing the plant operating status involves some risk of initiating a transient or challenging safety systems. The NRC concluded that the allowed limit of 72 hours provides the appropriate balance of safety.

Finally, the elimination of the autoclosure surveillance test in TS 4.5.2.d involves no significant hazards consideration because, with the elimination of the autoclosure interlock, there is no autoclosure interlock function to test. Removing the test requirement is an administrative change to make the TS consistent with the changed design, and the three standards of 10 CFR 50.92(c) are satisfied.

Based on the above review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Richard H. Wessman

Southern California Edison Company, et al., Docket No. 50-361, San Onofre Nuclear Generating Station, Unit No. 2, San Diego County, California

Date of amendment requests: May 22, 1991

Description of amendment requests: The licensees propose to revise Surveillance Requirement 4.8.1.1.2.d.1 in Technical Specification 3/4.8.1, "A. C. Sources," to permit up to a one month extension, on a one-time basis, for the 24-month refueling interval surveillance inspection associated with the two separate and independent diesel generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

RESPONSE: No.

This proposed change only involves an interval extension, on a one-time basis, for the once per refueling interval inspection of the diesel generator specified in SR 4.8.1.1.2.d.1. Extending the surveillance interval by one month will not significantly increase the probability of the DG system failing to perform its intended function. The failure history indicates AC power systems at SONGS 2 and 3 are extremely reliable. The weekly, monthly, quarterly, and the remaining refueling surveillance tests will continue to provide effective indications of system capability. In addition, this change does not alter any of the other AC power system surveillances which serve to assure continued operability of the AC power systems. Therefore, this proposed change will not constitute a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

RESPONSE: No.

The proposed change only revises, on a one-time basis, the frequency of a diesel generator surveillance inspection performed every refueling outage. The proposed change does not alter either the configuration of the facility or its manner of operation. Furthermore, there are no changes in surveillance requirement acceptance criteria as a result of the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

RESPONSE: No.

This proposed increase in the surveillance interval on a one-time basis only affects the frequency of a diesel generator surveillance performed every refueling outage, not the surveillances. The weekly, monthly, quarterly, and the remaining refueling interval surveillance frequencies and tests will not be affected by this proposed change and will continue to provide effective indications of system capability. The more frequent operability checks will assure DG operability. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: October 30, 1990 (TS 288)

Description of amendment request: The proposed amendment would make administrative changes to the Browns Ferry Nuclear Plant (BFN) Technical Specifications, including deletion of non-applicable notes from tables, correction of minor administrative errors from previous amendment submittals and implementation, and correction of discrepancies between the Technical Specifications Bases and the Updated Final Safety Analysis Report. Some changes apply to all three BFN units, while others apply to only one or two units.

The BFN Technical Specifications are being revised as follows:

1. Revise definition 1.0.II for Units 1, 2, and 3 to make the unit of measure for I-131 concentration be "micro-Curie per gram'

2. Delete Notes 2 and 5 from the Notes for Table 3.2.A for Units 1, 2, and 3.

3. Revise the trip level setting for "Instrument Channel - High Radiation Main Steamline Tunnel" in Table 3.2.A for Unit 2 to add the reference to Note 13 and to delete the less than or equal to symbol.

4. Revise the unit of measure for the noble gas monitors in Table 3.2.F for Unit 2 to be "micro-Curie per cubic centimeter."

5. Revise calibration frequency for reactor pressure instruments PI-3-74A&B in Table 4.2.F for Unit 2.

6. Revise Table 4.2.L for Units 1, 2, and 3 to correct the title and instrument numbers.

7. Revise bases Section 3.2 for Units 1, 2, and 3 to delete the statement that plant flood protection is always in place.

8. Add the reference to Net Positive Suction Head (NPSH) for the High Pressure Coolant Injection system back into bases Section 3.5.E for Units 1, 2 and 3.

9. Add back into Bases Section 3.5.F the reference to NPSH for the Reactor Core Isolation Cooling System for Units 1, 2, and 3.

10. Revise Bases Section 3.6.F/4.6.F for Unit 2 to note the intention to scram the reactor if the operating recirculation pump trips when in single loop operation.

11. Correct typographical error for Unit 1 to specify the requirements for reactor depressurization when suppression pool temperature exceeds its limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Definition 1.0.II (Dose Equivalent I-131) is being revised to show the correct units [of measure] for I-131 concentration [micro-Curie per gram] for all three units. Notes 2 and 5 are being deleted from Table 3.2.A (Primary Containment and Reactor Building Isolation Instrumentation) for all three units. Note 2 involves functional testing of redundant instrument channels when it is determined that a channel has failed in the unsafe condition. This note was in the original technical specifications for Unit 1 but was never referenced in Table 3.2.A. Operations takes the actions pursuant to Note 1 whenever instrument channels are tripped so Note 2 is unnecessary. Note 5 applies to a reactor high water level instrument which is not required for Boiling Water Reactors similar to BFN and is not installed in the plant. The note is therefore being deleted. The trip level setting in Table 3.2.A for Instrument Channel - High Radiation Main Steam Line Tunnel is being corrected for Unit 2 to agree with the NRC approved technical specification and to reference Note 13.

Table 3.2.F (Surveillance Instrumentation) is being corrected for the instruments RM-90-306 and RM-90-360 on Unit 2. The range for these instruments is being corrected to show units of [micro-Curie per gram]. Table 4.2.F (Minimum Test and Calibration Frequency for Surveillance Instrumentation) for reactor pressure instruments PI-3-74 A & B on Unit 2 is being revised to six months. The current value of twelve months was changed to six months by Amendment 167 based on the manufacturer's recommendation. This change corrects the technical specification. Table 4.2.L (Anticipated Transient Without Scram [ATWS] - Recirculation Pump Trip [RPT] Instrumentation Surveillance) is being revised to correct the title and instrument numbers in the table for all three units.

Bases Section 3.2 for all three units is being revised to delete the statement that flood protection is always in place. The FSAR was revised in 1987 to delete a similar statement. Because of the constant surveillance and control exercised by TVA over the Tennessee River and the relatively short amount of time to close the flood doors, leaving them normally open will not degrade plant flood protection. Paragraphs in Bases Section 3.5.E (High Pressure Coolant Injection) and 3.5.F (Residual Core Isolation Cooling) regarding the net positive suction head for each system were inadvertently deleted for Units 1, 2, and 3 when TVA submitted TS 274 to NRC. These descriptive paragraphs are still applicable and are therefore being re-inserted. A statement is being added to Bases Section 3.6.F/4.6.F (Recirculation Pump Operation) for Unit 2 to note the intention to scram the reactor if the operating recirculation pump trips when in single loop operation. TVA's commitment to make this change was documented in NRC's safety evaluation supporting Unit 2 Amendment 174. These changes do not affect any of the design basis accidents. They are administrative in nature and are being made to delete non-applicable notes from tables, to correct administrative errors in previous technical specification submittals and implementation, and to make the technical specifications agree with the Final Safety Analysis Report (FSAR). They do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from an accident previously evaluated.

The proposed changes are administrative in nature. They are being made to delete non-applicable notes from tables, to correct administrative errors in previous technical specification submittals and implementation, and to make the technical specifications agree with the FSAR. No modifications to any plant equipment are involved. There are no effects on system interactions made by these changes. The changes will correct the technical specifications so that they are more accurate and more closely reflect actual plant conditions.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature. They delete non-applicable notes from tables, correct administrative errors in previous technical specification submittals and implementation, and make the the technical specifications agree with the FSAR. No safety margins are affected by these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: December 28, 1989, as modified February 14, 1991

Description of amendment request: The December 28, 1989 proposed change would have deleted the requirement for monthly testing of the auxiliary feedwater pumps and the monthly valve line-up check. NRC Bulletin 88-04, "Potential Safety-Related Pump Loss" identified concerns with minimum flow designs of safety-related pumps and requested licensees to investigate these concerns and correct them where applicable. As part of the response to Bulletin 88-04, the licensee committed to disassemble and inspect the auxiliary feedwater pumps at the North Anna Power Station for any signs of degradation. As a result of initial inspections performed on both units during refueling outages, all six pumps were disassembled and inspected. Numerous problems were discovered, including diffuser vane cracks, scored bearings, and tolerances out of specification. A root-cause evaluation attributed part of these problems to the ways in which the pumps are tested. The pumps were not designed to run on recirculation for long periods of time, which is the current practice. To minimize future pump wear and ensure long-term reliability of the auxiliary feedwater pumps, several courses of action were being pursued by the licensee, in order to minimize operation of the pumps at low flow. This included limiting use of the pumps for steam generator leak testing, revising procedures for the quarterly ASME test

and applying for a Technical Specification (TS) change to eliminate the requirement for a monthly test on recirculation flow. The change would have deleted the surveillance requirement to demonstrate at least every 31 days that the pumps can develop at least 1250 psig at 53 gpm for the motor-driven pumps and at least 1380 psig at 35 gpm for the turbine-driven pump. The test is done by pumping through an orificed recirculation line at a flow rate far below the design parameters. The current TS test conditions (pressure and flow) require that the tests be performed in the recirculation mode of operation. Finally, the proposed change would have retained the requirement that the pumps be tested in accordance with Specification 4.0.5, which refers to Section XI of the 1980 ASME Boiler and Pressure Vessel Code which requires testing every 3 months.

Since the licensee's submittal dated December 28, 1989, the pumps have been overhauled and the licensee's quarterly ASME Section XI testing procedures have been revised to allow full-flow tests. A new full-flow recirculation line was added during the latest NA-1&2 refueling outages to permit full-flow testing at power without affecting the steam generators or normal feedwater regulation. Also, the licensee's quarterly Section XI testing is now done at flow conditions near the pump's best efficiency point. This test provides early warning of degradation and is similar to conditions when the pump is performing its safety function. If the monthly test could be done under similar conditions, safety would be enhanced because there would be less pump wear and more effective testing. Therefore, by letter dated February 14, 1991, the licensee modified its original submittal to request that monthly testing be done at conditions similar to the quarterly test.

The proposed change would delete the specific pressure and flow requirements for the monthly test and requires that the acceptance criteria be consistent with the monthly test. The specific criteria need not be in the TS because the ASME Code requires revising the criteria whenever the pump is overhauled.

The original submittal dated December 28, 1989 was published in the **Federal Register** on February 7, 1990 (55 FR 4285). The staff has determined that the modified submittal of February 14, 1991 should be evaluated with respect to 10 CFR 50.92(c).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve an increase in the probability or consequence of an accident previously evaluated. The auxiliary feedwater system provides water to the steam generators when normal feedwater is unavailable. The consequence of a pump failure will not be changed by this proposed change. The probability of failure will be reduced because there will be less wear and testing will be more effective.

2. The proposed change will not create the possibility of a new or different kind of accident. This is not an actual hardware change and does not alter any conditions or assumptions used in accident analysis or Technical Specification basis.

3. The proposed change does not involve a reduction in a margin of safety. The change will not affect the quantity or pressure of auxiliary feedwater provided.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 14, 1991

Description of amendment request: This proposed license amendment revises Technical Specification 5.3.2, "Control Rod Assemblies," to allow the use of silver-indium-cadmium as the neutron absorbing material in control rods. Technical Specification 5.3.2 currently specifies hafnium as the neutron absorbing material. The proposed revision would allow the use of hafnium control rods, silver-indium-cadmium control rods, or a mixture of both types.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard I - Involves a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Silver-indium-cadmium (Ag-In-Cd) rod cluster control assemblies (RCCAs) are functionally equivalent to the hafnium RCCAs currently in use at Wolf Creek Generating Station (WCGS). WCGS was originally designed for the use of this type of RCCA and such use is consistent with the assumptions and conclusions of the transient and accident analyses for WCGS. On this basis it is concluded that the consequences and probabilities of previously evaluated accidents are not increased. Standard II - Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated.

Ag-In-Cd RCCAs are completely interchangeable with the hafnium RCCAs currently in use at WCGS. The mechanical designs of the two types of RCCAs are equivalent and identical materials are utilized for spider assemblies and rodlet cladding. Ag-In-Cd RCCAs have demonstrated good performance in extensive use at similar facilities. Therefore, this proposed technical specification revision does not create the possibility of a new or different kind of accident from any previously evaluated.

Standard III - Involve a Significant Reduction in the Margin of Safety.

The Ag-In-Cd RCCAs will be subject to the same mechanical, nuclear, and thermal hydraulic limits as the original hafnium RCCAs and therefore, there will be no decrease in any margin of safety defined in the technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Jr., Acting Director

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 14, 1991

Description of amendment request: The proposed license amendment revises Technical Specification 3.1.3.4 to increase the maximum allowed control rod drop time from 2.2 to 2.7 seconds. The purpose of this proposed change is to support the planned use of Westinghouse VANTAGE 5H fuel

assemblies at the Wolf Creek Generating Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard I - Involves a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The increase in Rod Cluster Control Assembly (RCCA) drop time has no affect on mechanisms postulated in the Updated Safety Analysis Report (USAR) to cause design basis events. Sensitivity studies, evaluations and minimum Departure from Nucleate Boiling Ratio (DNBR) recalculations have confirmed that the transient behaviors described in the USAR are not significantly changed and that the USAR conclusions remain valid for the proposed change. On this basis it is concluded that there will be no significant increase in the probability or consequences of previously evaluated accidents.

Standard II - Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated.

This proposed change involves only an increase in the maximum RCCA drop time. There are no physical modifications to the facility or changes in methods of operation. The increase in the maximum RCCA drop time will allow the use of an upgraded fuel design (Westinghouse VANTAGE 5H). However, applicable nuclear, mechanical and thermalhydraulic fuel design criteria are unchanged. Therefore, this proposed technical specification revision does not create the possibility of a new or different kind of accident from any previously evaluated.

Standard III - Involve a Significant Reduction in the Margin of Safety.

Evaluations performed to support this proposed change demonstrate that all applicable safety analysis acceptance criteria will continue to be met and, therefore, there will be no decrease in any margin of safety defined in the technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Jr., Acting Director

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: April 24, 1991

Description of amendment request: The proposed amendment would clarify the ECCS requirements contained in the current Technical Specification section which is applicable to both cold shutdown and hot shutdown with Main Coolant pressure less than 1000 psig. This would be accomplished by dividing the current Technical Specification into two separate Specifications. Editorial changes to clarify the Technical Specification section concerning Emergency Core Cooling System (ECCS) subsystems operability are also included. In addition, this change would incorporate administrative requirements related to ECCS valve positions and ECCS pump operability from the Safety Evaluation Reports (SERs) for Amendments 59 and 134 to the Facility Operating License. These requirements are presently controlled via plant procedures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This Proposed Change is requested to clarify the ECCS requirements and incorporate administrative requirements from previous SERs into the Technical Specifications. It is mainly editorial in nature. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident or equipment malfunction previously analyzed. This proposed change is mainly editorial in nature. None of the present ECCS requirements, currently contained in both the Technical Specifications and plant procedures, has been altered. The requirement for a second operable Low Pressure Safety Injection (LPSI) pump during Reduced Level Operation with a cold leg opening has been evaluated for Low Temperature Overpressure (LTOP). The maximum MCS pressure is well below the Appendix G limits. Therefore, there is no increase in the probability or consequences of an accident or equipment malfunction previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed. This proposed change is mainly editorial. None of the present ECCS requirements, currently contained in both the Technical Specifications and plant procedures, have been modified. Therefore, this change will not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety. This proposed change is mainly editorial. It retains all of the ECCS requirements currently contained in both the Technical Specifications and plant procedures. The requirement for a second operable LPSI pump during Reduced Level Operation with a cold leg opening has been evaluated for LTOP. The maximum MCS pressure is well below the Appendix G limits. Therefore, the current margins of safety have been retained.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Richard H. Wessman

Previously Published Notices of Consideration of Issuance of Amendments To Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendment: April 23, 1991

Brief description of amendment request: The proposed amendment would add a footnote to the license that recognizes the transfer of Kansas Gas & Electric Company's possession-only interest in NPF-42 to a wholly owned subsidiary of Kansas Power and Light Company.

Date of individual notice in Federal Register: May 13, 1991 (56 FR 22026)

Expiration date of individual notice: June 13, 1991

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Notice of Issuance of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket No. STN 50-530, Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona

Date of application for amendment: February 21, 1991

Brief description of amendment: The amendment approves the proposed operating limits and related safety analysis for fuel cycle 3 operation.

Date of issuance: May 20, 1991

Effective date: May 20, 1991

Amendment No.: 26

Facility Operating License No. NPF-74: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11769)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: August 29, 1990.

Brief description of amendment: The amendment revises the Technical Specifications sections 3.15 and 4.15 related to the central room air cleaning system.

Date of issuance: May 17, 1991

Effective date: May 17, 1991

Amendment No. 134

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40462)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: August 17, 1987, as supplemented July 9, 1990, and October 12, 1990.

Brief description of amendment: The amendment extends the expiration date for the Facility Operating License No. DPR-23 from April 13, 2007 to July 31, 2010.

Date of issuance: May 21, 1991.

Effective date: May 21, 1991.

Amendment No. 135

Facility Operating License No. DPR-23. Amendment extends the expiration date of the license.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40460) The July 9, 1990, and October 12, 1990, letters provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: March 27, 1991, as supplemented April 30, 1991

Brief description of amendments: The amendments revise the diesel generator testing requirements, allowable outage times, and failure reporting requirements in the Technical Specifications by incorportaing the recommendations of NRC Generic Letter 84-15 and the Westinghouse Standardized Technical Specification, Revision 4. In addition, these amendments transfer the diesel testing requirements of Item B.6 of the NRC Confirmatory Order dated February 29, 1980 to the Zion Technical Specifications, thus removing Item B.6 from the Confirmatory Order.

Date of issuance: May 17, 1991

Effective date: May 17, 1991

Amendment Nos.: 123 and 112

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1991 (56 FR 11492)

The April 30, 1991, submittal provided additional clarifying information and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: August 20, 1990

Brief description of amendment: The amendment revises the TS by implementing an expanded operating domain.

Date of issuance: May 15, 1991

Effective date: May 15, 1991

Amendment No.: 69

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11777)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 28, 1991

Brief description of amendment: The amendment revises the Technical Specification (TS) Table 3.6.3-1, Primary Containment Isolation Valves, by modifying the numbers for two valves.

Date of issuance: May 16, 1991

Effective date: May 16, 1991

Amendment No.: 70

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11779)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: November 15, 1989, as supplemented March 28 and August 29, 1990.

Brief description of amendments: The amendments revise the Pressure/Temperature Limits and the Low Temperature Overpressure Protection system operability requirements in Section 3.1 of the TSs and revise the associated bases.

Date of issuance: May 14, 1991

Effective date: May 14, 1991

Amendment Nos.: 188, 188, 185

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 6, 1991 (56FR4862)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 14, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: March 15, 1991

Brief description of amendment: The amendment modified Technical Specification 4.0.2 by: (1) deleting the 3.25 limitation on extending three successive surveillance intervals; (2) utilizing the exact, suggested wording of Generic Letter 89-14 in Specification 4.0.2 for the 25-percent allowance for individual surveillance intervals; and, (3) incorporating the Generic Letter 89-14 wording in the Bases for Specification 4.0.2.

Date of issuance: May 21, 1991

Effective date: May 21, 1991

Amendment No: 77

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15641)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: October 24, 1988, as supplemented June 1, 1989, October 19, 1989, March 27, 1990, November 8, 1990, and modified December 18, 1990

Brief description of amendment: This amendment changes the maximum allowable primary loop resistance temperature detection delay time from 8 seconds to 14 seconds.

Date of Issuance: May 23, 1991

Effective Date: May 23, 1991

Amendment No.: 50

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46146) and February 20, 1991 (56 FR 6873)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: October 3, 1990, as superseded February 21, 1991.

Brief description of amendments: These amendments revise TS Section 6.0 to reflect (a) the present organization titles for the Florida Power and Light Company Nuclear Division, and (b) change the composition of the Plant Nuclear Safety Committee (PNSC).

Date of issuance: May 20, 1991

Effective date: May 20, 1991

Amendment Nos. 142 and 137

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13663)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: November 21, 1990

Brief description of amendments: These amendments revise Section 3/4 5.1 of the Technical Specifications, "Accumulators, Limiting Condition for Operation," by increasing the indicated accumulator operating band from "6545 gallons and 6665 gallons" to "6520 gallons and 6820 gallons."

Date of issuance: May 29, 1991
Effective date: May 29, 1991
Amendment Nos. 143 and 138
Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** Feberuary 20, 1991 (56 FR 6874)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 29, 1991.
No significant hazards consideration comments received: No
Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: March 25, 1991
Brief description of amendment: The amendment adds an allowable outage time for the turbine bypass valves.
Date of Issuance: May 20, 1991
Effective date: May 20, 1991
Amendment No.: 162
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15642)
The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 20, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: October 15, 1990
Brief description of amendment: The amendments change the Appendix A Technical Specifications by allowing continuation of surveillance testing for certain engineered safety features (ESF) actuation system instrumentation with one of four redundant actuation devices inoperable by bypassing the inoperable actuation device. This change is applicable to the pressurizer pressure-low safety injection, steam generator water level-high-high turbine trip and feedwater isolation, Tavg-low coincident with reactor trip feedwater isolation, steam generator water level-low-low auxiliary feedwater pump start, and 4.16 KV ESF bus undervoltage functions.
Date of issuance: May 17, 1991
Effective date: May 17, 1991
Amendment Nos.: 24 and 14
Facility Operating License No. NPF-76. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53072)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 11, 1991
Brief description of amendment: The amendment changed the Technical Specifications to extend the surveillance frequency for the residual heat removal (RHR) logic system functional test from once/6 months to once/18 months in order to avoid undesirable plant configurations during power operation.
Date of issuance: May 22, 1991
Effective date: May 22, 1991
Amendment No.: 140
Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15643)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1991.
No siginificant hazards consideration comments received: No.
Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 31, 1989, as amended on March 22, and April 19, 1991
Brief description of amendment: The amendment revised the Technical Specifications to revise the setpoint tolerance on the Low-Low Set Safety/Relief Valve pressure switches, revise the format and location of the specification, and correct typographical errors in instrument I.D. numbers.
Date of issuance: May 22, 1991
Effective date: May 22, 1991
Amendment No.: 141
Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 1989 (54 FR 49134)
The additional information contained in the supplemented letters dated March 22, and April 19, 1991, was clarifying in nature and thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1991.

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 2, 1990, as supplemented by letters dated March 8, and April 19, 1991
Brief description of amendment: The amendment changed the Technical Specifications to remove cycle-specific reactor physics parameters and incorporate them into a new document called the Core Operating Limits Report. The amendment was requested in response to Generic Letter 88-16.
Date of issuance: May 22, 1991
Effective date: May 22, 1991
Amendment No.: 142
Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34374)
The additional information contained in the supplemental letters dated March 8, and April 19, 1991, were clarifying in nature and thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1991.

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: November 9, 1990, supplemented April 12, 1991.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement 4.0.2 by deleting the requirement that allows the combined time interval for any three consecutive surveillance intervals not to exceed 3.25 times the specified surveillance interval. The change is based on the guidance of the Nuclear Regulatory Commission's Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals." The supporting Bases for Technical Specification 4.0.2 are also revised to reflect the requested changes.

Date of issuance: May 29, 1991

Effective date: May 29, 1991

Amendment No.: 152

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53073)

The April 12, 1990 letter provided supplemental information which did not affect the staff's proposed determination of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: January 30, 1991

Brief description of amendments: The amendments revise the Technical Specifications Section 6.2.B.4 requirements for Operations Committee review of maintenance procedures. The requirements for preparation, review, and approval of maintenance procedures are included in a new Section 6.2.C.

Date of issuance: May 9, 1991

Effective date: May 9, 1991

Amendment Nos.: 96/89

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11783)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 7, 1991

Brief description of amendments: The amendments changed the Technical Specifications (TSs) to revise the composition of the Plant Operations Review Committee (PORC) and to make a minor editorial change to the Unit 2 TSs to remove a reference to a figure previously deleted.

Date of issuance: May 16, 1991

Effective date: May 16, 1991

Amendment Nos.: 108 and 77

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13668)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 30, 1990

Brief description of amendments: These amendments changed the Technical Specifications to revise the emergency diesel generator periodic inspection interval from once per year to once per 18 months.

Date of issuance: May 20, 1991

Effective date: May 20, 1991

Amendment Nos.: 159 and 161

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15645)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: November 21, 1989 as supplemented April 25, 1990, February 22, March 6, March 27, April 23, May 3, and May 10, 1991.

Brief description of amendment: This amendment addressed permanent shutdown of Fort St. Vrain (FSV). It prohibits future operation of the FSV reactor, and converts the license to one authorizing possession only.

Date of issuance: May 21, 1991

Effective date: May 21, 1991

Amendment No.: 82

Facility Operating License No. DPR-34. Amendment revised the license.

Date of initial notice in **Federal Register:** May 16, 1990 (55 FR 20364)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado 80631

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: February 15, 1991

Brief description of amendment: This amendment revises the Technical Specifications to modify the method of locking valve 856 open from removal of A. C. power to removal of D. C. control power in order to enable valve manipulation from the control room while maintaining the locked OPEN requirement.

Date of issuance: June 3, 1991

Effective date: June 3, 1991

Amendment No.: 42

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20045)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: January 31, 1991

Brief description of amendments: These amendments revise the NA-1&2 TS for the visual snubber inspection program and are consistent with the guidance of the NRC Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990.

Date of issuance: May 30, 1991

Effective date: May 30, 1991

Amendment Nos.: 144 and 128

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9388)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: March 27, 1991

Brief description of amendments: These amendments incorporate the location of the gaseous effluent release point associated with the newly constructed Radwaste Facility into Figure 5.1-1. In addition, a station process vent is also identified as a mixed mode release point.

Date of issuance: May 20, 1991

Effective date: May 20, 1991

Amendment Nos. 157 and 156

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15646)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Notice of Issuance of Amendment To Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity For Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 12, 1991, 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 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. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made 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. 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, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

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 a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., 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) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director):** petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the 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 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).

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: May 15, 1991 as supplemented by letter dated May 22, 1991

Description of amendment request: The amendment modified ACTION statement number 82 for Technical Specification (TS) 3.3.7.5, "Accident Monitoring Instrumentation," to allow continued plant operation with the inboard Main Steam Isolation Valve, 1B21-F022D, closed position indication inoperable until the next reactor shutdown.

Date of issuance: May 30, 1991

Effective date: May 30, 1991

Amendment No.: 58

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 30, 1991.

Attorney for licensees: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

NRC Project Director: John N. Hannon

Dated at Rockville, Maryland, this 5th day of June 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-13802 Filed 6-11-91; 8:45 am]

BILLING CODE 7590-01-D

Application for a License to Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export nuclear grade graphite as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, Date of appl., date received, application No.	Description of items to be exported	Country of destination
MWI, Incorporated, 03/25/91, 05/23/91, XMAT0360	400,000 kgs. of Bulk Nuclear Grade Graphite for EDM electrodes and continuous casting dies. For resale to various countries for non-nuclear end use.	United Kingdom.

Dated this 31st day of May 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-13971 Filed 6-11-91; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

May 30, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed amendments to the Columbia River Basin Fish and Wildlife Program (high priority habitat and production measures for anadromous fish).

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et seq.*) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

On May 13, the Council announced three processes to consider amendments to the program:

- A fast-track process to consider high-priority habitat and production measures for salmon and steelhead;
- A comprehensive process to begin in August, 1991, for recommendations to amend other salmon and steelhead provisions of the fish and wildlife program; and
- A process to consider resident fish and wildlife amendments, to begin in September, 1992.

With this notice, the Council initiates the first process, to consider high priority production and habitat measures for salmon and steelhead. This process will evaluate certain habitat and production actions proposed by the Columbia Basin Fish and Wildlife Authority, the Bonneville Power Administration, the U.S. Forest Service, Oregon Trout, the Bureau of Land Management and the Oregon Rivers Council. Copies of further background information, or the proposals themselves, may be obtained by contacting the Public Affairs Division at the address and telephone number given below (see **"FOR FURTHER INFORMATION"**).

BACKGROUND: For several years, the region's fish and wildlife agencies and Indian tribes have been engaged in a planning effort, called "system planning," to identify habitat and production measures for all 31 of the subbasins in the Columbia River Basin, and to integrate them into a coordinated, basinwide plan. The Council will consider the result of this planning effort in an amendment process that will begin on August 9, 1991, and end not later than August 9, 1992.

Meanwhile, several salmon stocks are in critical condition, and the Council wants to proceed with recovery measures for these weak stocks as soon as possible. Accordingly, the Council asked parties who have been involved in system planning to propose habitat and production measures that would help these stocks, and which should not be delayed pending the full system planning amendment process. These are the proposals that the Council is now considering for amendment into the fish and wildlife program.

In most amendment processes, the Council identifies the specific language that is proposed to be amended or added to fish and wildlife program. In the interest of time, however, the Council has chosen in this instance not to propose specific amendment language. Instead, the Council is making the substantive proposals available to interested parties for comment on their merits. Once the Council has determined which proposals to accept or modify, the Council will make appropriate revisions to the language of the fish and wildlife program. Any proposals that the Council does not accept in this rulemaking may be deferred for consideration in the Council's more extended rulemaking beginning August 9, 1991.

PUBLIC COMMENT: Written comment on the proposed amendments is invited. All written comments must be received in the Council's central office, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon, 97204, by 5 p.m. Pacific time on July 19, 1991. Comments should be submitted to Stephen Crow, Director of Public Affairs, at this address. Comments should be clearly marked "Comments on High Priority Recovery Actions."

After the close of written comment, and up to the time of the Council's final decision on the proposed amendments, the Council may hold consultations with interested parties to clarify points made in written comment.

HEARINGS: Public hearings will be held as follows: June 20, 1991 in Boise, Idaho, June 26, 1991 in Portland, Oregon, July 8, 1991 in Pasco, Washington, July 10, 1991 in West Yellowstone, Montana.

If you wish to obtain a schedule of the hearings, including specific locations of the hearings, contact the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355. To reserve a time period for presenting oral comments at a hearing, contact the Public Affairs Division. Requests to reserve a time period for oral comments must be received no later than two work days before the hearing.

FINAL ACTION: The Council expects to take final action on the proposed amendments at its August 1991 meeting in Lincoln City, Oregon. Notice will be announced in accordance with applicable law and the Council's practice of providing notice of its meeting agendas.

FOR FURTHER INFORMATION: Further information may be obtained by contacting the Council's Public Affairs Division at the address and telephone numbers listed above.

A document that includes synopses of the proposals is available from the Council's central office (request publication 91–11).

In addition to synopses of the proposals, the Council is preparing fact sheets on the subbasin plans. This document is available by calling the Council's central office (request publication 91–12).

The Council's central office also has copies of all subbasin plans and the full text of the proposed habitat production actions. They are available on request.

Edward W. Sheets,

Executive Director.

[FR Doc. 91–13882 Filed 6–11–91; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29276; File No. SR–BSE–91–5]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to its Fee Schedule.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the selfregulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE, pursuant to Rule 19b–4 of the Act, submitted a proposed rule change to amend its floor related fees, electronic access and processing fees, representative account services fees, transaction fees and listing fees. The BSE proposes to institute its amended fee schedule on June 1, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The BSE proposes several amendments to its schedule for floor related fees, electronic access and processing fees, representative account services fees, transaction fees and listing fees. The proposed rule change would amend the BSE floor related fees for technology and pass-through charges. The BSE proposes to amend its technology fee to increase its current fee of $200 per terminal to $250 per terminal for specialists and to increase its current fee of $50 per terminal to $100 per terminal for floor brokers. The BSE also proposes to add additional pass-through charges to its fee schedule. The revised pass-through charges would provide that (1) the use of board slips will cost $.025 per ticket, (2) off-hours assistance on non-BSE equipment by BSE personnel will be priced at $25 per hour and (3) members will be charged "at cost" for repairs to BSE equipment damaged by other than normal wear and tear.

The BSE proposes to establish new fees for electronic access and processing. The proposed rule change would implement a monthly fee for off-floor members who access the Boston Exchange Automated Communication Order-routing Network ("BEACON") through third-party processors (ADP). Subscribers will be charged the larger of their monthly BSE transaction fees or ADP monthly processing fee (currently $1200) to the BSE. The proposed rule change also would provide that members who have remote BEACON terminals will be charged the larger of their monthly BSE transaction fees for orders routed through the terminal or the BSE's cost to provide the link ($100). The proposal would establish a new transmission service fee for electronic file transmissions. The BSE proposes to charge a transmission service fee of $200 for open orders and $100 for trade files, P&S blotters and equity reports.

The BSE proposes the following amendments to its fees for representative account services:

	Current fee	Revised fee
DTC Facility		
Deposit Sheets	$1.50/item	$4.00/item.
Deposit Items	.50/item	$1.00/item.
Deposit Communications	$1.00	.00.
ID Activity		
ID Trades	.36/item	$1.00/item.
ID Account Set-up	$1.00/item	$1.00/item.
ID Account Deletion	$1.00/item	.00.
ID Account Maintenance	.00	.50/item.
Envelope Processing	.00	$25.00/item.
Distribution	.00	$300.00/month.
Check Issuance/Deposit	.00	$300.00/month.

	Current fee	Revised fee
Non-BSE Executed Trades	.50/trade	.00.

The BSE proposes the following amendments to its transaction fees:

	Current cap	Revised cap
A. Non-Automated Cross Orders		
maximum charge per side	$150 (both sides)	$100 (both sides).
B. Automated Cross Orders		
maximum charge per side		
Programs of 15 or more orders	$75 (one side)	$75 (one side).
Programs of 2 to 14 orders	N/A	$75 (one side).
Programs of 1 order	N/A	$75 (both sides).

C. Value Charge Rates

	Current rate	Revised rate
$500.1+ million in monthly contract value	$.03/$1,000	$.01/$1,000.

The BSE proposes the following changes to its listing fee schedule:

	Current fee	Revised fee
Additional shares ($.005 per share)	$2,500 maximum	$5,000 maximum.
Annual Maintenance		
First Issue	$750	$1,000.
Additional Issues	$500	$750.

The purpose of the amended fee schedule is to capitalize on the competitive niches that the BSE currently enjoys, to realign pricing with associated costs for certain services and to reduce inequities that exist among various member firm constituencies.

The statutory basis for the proposed rule change is section 6(b)(4) of the Act which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were solicited from the Fee Committee of the Board of Governors, comprised of representatives of dealer-specialist, retail, and institutional firms; from the Executive Committee, which serves as the Board of Governors of the Clearing Corporation; and from the Board of Governors of the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–91–5 and should be submitted by July 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 5, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-13936 Filed 6-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29272; File No. SR-CBOE-91-20]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Withdrawal of Approval of Underlying Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 14, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 5.4 to allow the Exchange's Product Development Committee ("Committee") to withdraw approval of an underlying security for any reason the Committee deems necessary. This revision will conform the CBOE's rule to those of other self-regulatory organizations. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rules 5.3 and 5.4 set forth the specific initial and on-going standards that stocks must satisfy to be eligible to underlie CBOE-traded options. If stocks fall below these standards, Exchange Rule 5.4 currently allows the Committee to withdraw approval of the underlying security for Exchange options transactions. The CBOE now proposes to amend Exchange Rule 5.4 to provide explicitly that, in addition, the Committee may withdraw approval of an underlying security for any reason the Committee deems necessary. In doing so, the Exchange is explicitly stating its policy and practice with respect to the administration of its listing standards rules that, even though a stock may satisfy the Exchange's listing standards, the CBOE may choose to withdraw approval of that stock for other reasons. The amendment will conform the CBOE's written rules to the rules of the American Stock Exchange ("Amex"), the New York Stock Exchange ("NYSE"), and the Philadelphia Stock Exchange ("PHLX"), which allow those exchanges to withdraw approval of underlying securities for reasons other than meeting the listing standards.[1]

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it promotes just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the administration of an existing CBOE rule in that it codifies the CBOE practice of delisting an option for reasons related to a *bona fide* business judgement. Accordingly, the proposal has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] See Amex Rule 916, NYSE Rule 716, and PHLX Rule 1010.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned selfregulatory organization. All submissions should refer to the file number in.the caption above and should be submitted by July 12, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 4, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-13937 Filed 6-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18185; 812-7692]

Carnegie Cappiello Trust, et al.; Application

June 5, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Carnegie-Cappiello Trust, Carnegie Tax Exempt Income Trust, and

Carnegie Government Securities Trust (the Government Series and Carnegie Intermediate Government Series only) (collectively, the "Funds"), Carnegie Fund Distributors, Inc. (the "Distributor"), and any future open-end investment company registered under the Act for which Carnegie Capital Management Company acts as investment adviser.

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1.

SUMMARY OF APPLICATION: The Applicants seek an exemption under section 6(c) of the Act to permit the Funds to impose and, under certain circumstances, waive a contingent deferred sales charge on certain redemptions of its shares.

FILING DATE: The application was filed on February 28, 1991 and amended on May 30, 1991.

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 the 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 July 2, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the 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. Applicants, 1100 The Halle Building, 1228 Euclid Avenue, Cleveland, Ohio 44115–1831.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263 or Max Berueffy, Branch Chief, at (202) 272–3016 (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. Carnegie-Cappiello Trust and Carnegie Tax Exempt Income Trust are Ohio trusts. Carnegie Government Securities Trust is a Massachusetts business trust. The Funds are each registered under the Act as open-end management investment companies.

2. Carnegie Fund Distributors, Inc. is the principal underwriter of each Fund. The Funds are advised by Carnegie Capital Management Company.

3. The Funds currently sell their shares at net asset value plus a sales load on transactions involving less than $4 million. The front-end sales charge is waived for certain classes of purchasers named in each Fund's prospectus.

4. The Applicants propose to eliminate the front-end sales charge on purchases of Fund shares of $1 million or more and impose a contingent deferred sales charge ("CDSC") on such shares if they are redeemed within 24 months of their purchase. The CDSC will be 1% of the lesser of the net asset value of the shares redeemed (exclusive of reinvestment dividends and capital gains distributions) or the original cost of such shares.

5. In determining whether a CDSC is payable, the Funds will assume that shares held the longest will be the first to be redeemed.

6. In accordance with Rule 11a–3 under the Act, no CDSC will be imposed on exchanges of shares offered by the Applicants for shares of other Carnegie Fund Group funds distributed by the Distributor or for any other funds in the Carnegie Funds Group which are not distributed by the Distributor. If, however, the shares acquired in an exchange are redeemed within 24 months following the original investments, the CDSC will be assessed.

7. The Applicants intend to waive the CDSC on the following redemptions: (a) distributions from retirement plans qualified under section 401(a) of the Internal Revenue Code of 1986, as amended, when such redemptions are necessary to make distributions to plan participants (such payments include, but are not limited to death, disability, retirement or separation from service); (b) distributions from a custodial account under Internal Revenue Code 403(b)(7) or an individual retirement account (an "IRA") due to death, disability or attainment of age 59½; (c) a tax-free return of an excess contribution to an IRA; and (d) distributions by other employee benefit plans to pay benefits. The CDSC will also be waived on periodic redemptions made pursuant to an automatic withdrawal plan, provided such redemptions do not exceed 10% of assets that would otherwise be subject to the CDSC.

8. The Applicants will provide a credit for any CDSC paid in connection with a redemption of shares followed by a reinvestment into the same fund within thirty days of the redemption. Such a credit will be distributed by the Distributor from its house account where the CDSC is held until such distribution becomes necessary. The Distributor's house account will maintain a sufficient balance to make such credits.

Applicants' Legal Analysis:

1. The Applicants seek an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder. They submit that the requested relief is, in keeping with the requirements of section 6(c) of the Act, 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.

2. The Applicants submit that the CDSC, unlike a front-end sales charge, will enable covered shareholders to have their entire investment working for them from the time of their initial purchase of shares. In addition, the money that otherwise would have been paid as a front-end sales charge will benefit a Trust by increasing the Trust's asset base and reducing its expense ratio, which will have a corresponding benefit to all shareholders. The Applicants assert that the imposition of the CDSC will not restrict any affected shareholder of any Trust from receiving a proportionate share of the current net assets of such Trust, but will merely defer the deduction of a sales charge and make it contingent upon an event which may never occur.

3. The Applicants submit that the waiver of the CDSC will not harm the Trusts or their shareholders, nor will it unfairly discriminate among shareholders or purchasers. The Applicants submit that the waiver on redemptions in connection with certain distributions from retirement plans and employee benefit plans is appropriate for public policy reasons. Such a waiver is fully consistent with the provisions granting favored federal tax treatment to accumulations under such plans and imposing additional taxes on early distributions from them.

4. The Applicants further submit that the proposed credit of the CDSC applicable to a shareholder who redeems shares subject to the charge and reinvests the proceeds of the redemption within thirty days of the redemption is in the interest of shareholders. This reinvestment privilege allows investors who erroneously redeemed or otherwise had second thoughts about having redeemed their shares to reinvest the proceeds without reincurring the sales charge.

Applicants' Condition:

If the requested exemptive relief is granted, the Applicants agree to comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Rel. No. 16619 (November 2, 1988), as currently proposed and as it may be re-proposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–13938 Filed 6–11–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition Docket Numbers RSOR–91–1 and 2]

Petition for Relief From the Requirements of Railroad Operating Rules Regulation

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Garden City Northern Railway, Inc. and the Garden City Western Railway Company of Garden City, Kansas, have petitioned the Federal Railroad Administration (FRA) under a single petition for permanent relief from the requirements of 49 CFR Part 217 entitled, "Railroad Operating Rules."

Part 217 requires that railroads file with FRA all operating rules, timetables and timetable instructions, and further requires the periodic instruction and compliance testing of employees on these rules. Additionally, railroads with more than 400,000 total manhours per year must file on annual report with FRA.

The Garden City Northern Railway, Inc. is 29 miles in length and the Garden City Western Railway Company is 14 miles in length. Both railroads are operated by the same personnel (five full time employees). It is their belief that because the very limited operation of the railroads, no benefit would result from compliance with part 217. Hence, the petitioner requests relief from the regulations.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comments since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Communications concerning this proceeding should identify the appropriate FRA Waiver Petition Docket Numbers RSOR–91–1 and 2 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

Communications received before July 22, 1991 will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in room 8201, Nassif Building, 400 7th Street, SW., Washington, DC.

Issued in Washington, DC on June 4, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91–13927 Filed 6–11–91; 8:45 am]

BILLING CODE 4910–06–M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1991, Public Law 101–516, signed into law by President George Bush on November 5, 1990, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA–03–0064–00	$4,500,039	04/12/91
Berkshire Regional Transit Authority, Pittsfield, MA	MA–03–0168–00	1,699,998	04/29/91
City of Philadelphia, Philadelphia, PA.–N.J.	PA–03–0148–04	3,300,000	04/28/91

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Waterloo Metro Transit Authority, Waterloo, IA	IA–90–X123–00	$642,873	05/13/91
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL.-Northwestern IN	Il–90–X173–00	27,855,659	04/23/91

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Obligation date
City of Laredo, Laredo, TX	TX-90-X206-00	982,000	05/01/91

Issued on June 6, 1991.
Brian W. Clymer,
Administrator.
[FR Doc. 91-13884 Filed 6-11-91; 8:45 am]
BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Burleson County FSA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Burleson County FSA, Caldwell, Texas, on May 31, 1991.

Dated: June 6, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-13855 Filed 6-11-91; 8:45 am]
BILLING CODE 6720-01-M

Enterprise Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Enterprise Savings and Loan Association, Compton, California (OTS No. 6811), on May 31, 1991.

Dated: June 6, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-13856 Filed 6-11-91; 8:45 am]
BILLING CODE 6720-01-M

Goldome Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners, Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Goldome Federal Savings Bank, St. Petersburg, Florida, on May 31, 1991.

Dated: June 6, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-13865 Filed 6-11-91; 8:45 am]
BILLING CODE 6720-01-M

Merabank Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for MeraBank Federal Savings Bank, El Paso, Texas, on May 31, 1991.

Dated: June 6, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-13866 Filed 6-11-91; 8:45 am]
BILLING CODE 6720-01-M

United Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for United Federal Savings Bank, Smyrna, Georgia, on May 31, 1991.

Dated: June 6, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-13857 Filed 6-11-91; 8:45 am]
BILLING CODE 6720-01-M

Westerleigh Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Westerleigh Federal Savings and Loan Association, Staten Island, New York, on May 31, 1991.

Dated: June 6, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-13867 Filed 6-11-91; 8:45 am]
BILLING CODE 6720-01-M

Burleson County Savings Association, a Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Burleson County Savings Association, A Federal Savings Bank, Caldwell, Texas, OTS No. 7880, on May 31, 1991.

Dated: June 6, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-13858 Filed 6-11-91; 8:45 am]
BILLING CODE 6720-01-M

Clyde Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Clyde Federal Savings Association, Chicago, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-13862 Filed 6-11-91; 8:45 am]
BILLING CODE 6720-01-M

Commercial Savings and Loan Association, FA et al.; Replacement of Conservator With a Receiver

Notice is hereby given that, on May 31, 1991 pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator with the Resolution Trust Corporation as sole Receiver for each of the following savings associations:

Name	Location	OTS No.
1. Commercial Savings and Loan Association, FA	Hammond, Louisiana	8612
2. Southeastern Federal Savings Bank	Laurel, Mississippi	8811
3. First Federal Savings Association of Nacogdoches	Nacogdoches, Texas	9015
4. North Texas Federal Savings Association	Wichita Falls, Texas	8891
5. Sabine Valley Federal Savings and Loan Association	Center, Texas	9027

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13874 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Goldome Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Goldome Savings Bank, FSB, St. Petersburg, Florida (OTS No. 6482), on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13871 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Greenwood Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Greenwood Federal Savings and Loan Association, Greenwood, Mississippi ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13875 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Heritage Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Heritage Federal Savings Association, Lancaster, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13863 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Hometown Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Hometown Federal Savings Association, Winfield, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13868 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

MeraBank Texas, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for MeraBank Texas, F.S.B., El Paso, Texas, OTS No. 8501, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13872 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Tennessee Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Tennessee Federal Savings Bank, Cookeville, Tennessee ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13869 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Texas Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift

Supervision duly replaced the Resolution Trust Corporation as Conservator for Texas Federal Savings Association, San Antonio, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 22, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–13870 Filed 6–11–91; 8:45 am]

BILLING CODE 6720–01–M

Tennessee FSB; Replacement of Conservator With a Receiver

Notice is hereby given that pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Tennessee FSB, Cookeville, Tennessee ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–13864 Filed 6–11–91; 8:45 am]

BILLING CODE 6720–01–M

United Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for United Savings Bank, FSB, Smyrna, Georgia, OTS No. 6650, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–13859 Filed 6–11–91; 8:45 am]

BILLING CODE 6720–01–M

Westerleigh Savings, FSLA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Westerleigh Savings, FSLA, Staten Island, New York (OTS No. 0753), on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–13860 Filed 6–11–91; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on June 12 in room 600, 301 4th Street, SW., Washington, DC from 10:30 a.m. to 12 noon.

The Commission will meet with the Honorable Fred Bush, Commissioner General, Seville Expo 92 to discuss plans for the U.S. pavilion at the Exposition. The Commission also will meet with Mr. Robert T. Coonrod, Deputy Director, Voice of America to discuss VOA's Persian Gulf War broadcasts and plans for the diposition of RIAS assets in Germany.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Katamets, (202) 619–4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: June 4, 1991.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 91–14000 Filed 6–10–91; 9:58 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 113

Wednesday, June 12, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Change in Time of Open Commission Meeting

June 7, 1991.

The Federal Communications Commission previously announced on June 6, 1991, its intention to hold an Open Meeting on Thursday, June 13, 1991, commencing at 9:30 a.m.

The Time has been changed to 10:30 a.m.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

The prompt and orderly conduct of Commission business requires this change and no earlier announcement was possible.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Issued: June 7, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–14046 Filed 6–10–91; 1:41 pm]

BILLING CODE 6712–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Reauthorization Committee Hearing and Meeting; Notice

TIMES AND DATE: A hearing and meeting of the Board of Directors Reauthorization Committee will be held on June 24, 1991. The hearing will commence at 9:00 a.m. and will be followed immediately by the meeting. Members of the public that wish to comment at the hearing are requested to contact Kenneth Boehm, Counsel to the Board of Directors, at (202) 863–1839.

PLACE: The Marriott Suites Hotel, 801 North St. Asaph Street, Alexandria, VA. 22314, Salons I and II, (703) 836–4700

STATUS OF HEARING AND MEETING: Open.

MATTERS TO BE CONSIDERED:

A. Hearing

1. Approval of Agenda.
2. Public Comment on Reauthorization of the Legal Services Corporation.
3. The Legal Services Corporation Act.
4. The 1991 Subcommittee Bill on the Legal Services Corporation.
5. The March 7, 1991 McCollum-Stenholm Bill.

B. Meeting

1. Approval of Minutes of April 20, 1991 Meeting, Continued on April 28, 1991, and Minutes of June 3, 1991 Meeting.
2. Consideration of Public Comment and Possible Recommendation to the Board of Directors Regarding the Reauthorization of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Dated: June 10, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–14132 Filed 6–10–91; 3:36 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 10, 17, 24, and July 1, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 10

Monday, June 10

2:00 p.m.
Briefing by Proposed Rule on Training and Qualification of Nuclear Power Plant Personnel (Public Meeting)

Tuesday, June 11

10:00 a.m.
Briefing by Agreement States on Compatibility Issues (Public Meeting)

Wednesday, June 12

10:00 a.m.
Briefing by Progress of Design Certification Review and Implementation (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Amendments to 10 CFR Parts 2 and 35 on Quality Management and Reportable Events
b. Joint Motion to Stay or Vacate License Issuance by Petitioners in Shoreham Proceeding

Week of June 17—Tentative

Wednesday, June 19

1:30 p.m.
Briefing on Shutdown Risk Status (Public Meeting)

Thursday, June 20

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 24—Tentative

Friday, June 28

8:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 1—Tentative

Wednesday, July 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: June 6, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–14088 Filed 6–10–91; 1:42 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
June 12, 1991

Part II

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 750 and 890

Supportive Housing for Persons With Disabilities; Interim Rule and Request for Comments; Notice of Fund Availability for FY 1991

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 750 and 890

[Docket No. R-91-1525; FR-2974-I-01]

RIN: 2502-AF20

Supportive Housing for Persons With Disabilities

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule adds part 890, which establishes the new Supportive Housing for Persons with Disabilities Program and enables FY 1991 funding of supportive housing (relating to capital advances) for persons with disabilities under part 890. Requirements for the project rental assistance contracts and management of supportive housing for persons with disabilities projects selected in FY 1991 will be published in July 1991 in a proposed rule also under part 890. The Supportive Housing for Persons with Disabilities Program is authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAH Act) as amended by the Dire Emergency Supplemental Appropriations Act (Pub. L. 102–27) (April 10, 1991) and is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. This interim rule also adds new part 890 to list of programs covered by 24 CFR part 750 (disclosure and verification of social security numbers and employer identification numbers by applicants and participants).

DATES: Effective date: July 12, 1991. Comment due date: August 12, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address. Hearing or speech impaired individuals may call the Rules Docket Clerk's TDD number (202) 708–3259.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708–2084. (The telephone numbers listed in this paragraph are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Director, Housing for Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6116, Washington, DC 20410, telephone (202) 708–2730.

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. The Department provided for 21 days public comment on the information collection requirements. OMB approval of those information collections, following public comment, is anticipated well in advance of the due date of applications submitted in response to today's documents.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing the reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Findings and Certifications. 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: HUD Desk Officer, room 3001, Washington, DC 20530.

II. Background

A. Applicability of Part 885

Part 885 provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing projects serving elderly or handicapped families and individuals. A loan (up to 40 years) made under part 885 is used to finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals. The housing projects provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services. New part 890 has the same description of services based on section 811(a). Examples of services not included in part 890 are recreational or social activities directors and medical services.

Subpart B of part 885 applies to projects for elderly or handicapped families that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. Subpart C of part 885 applies to projects for nonelderly handicapped families receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959. Part 885 has been amended by an interim rule published elsewhere in today's **Federal Register** and will apply to projects for which section 202 loan reservations were made in FY 1990 and prior years. Projects for persons with disabilities selected for

funding in FY 1991 and subsequent years will be covered by new part 890 (added by this interim rule).

B. New Part 890—An Overview

Persons familiar with the organization of 24 CFR part 885, subpart C for section 202 Projects for Nonelderly Handicapped Families and Individuals—Section 162 Assistance, will notice the many similarities part 890 has with part 885, subpart C. This organization has been adopted to foster an easy transition from the section 202 handicapped project assistance procedures to new part 890 supportive housing for disabled persons assistance procedures.

Section 811 of the NAH Act provided a new supportive housing for persons with disabilities program. The purpose of this section is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that (a) is designed to accommodate the special needs of such persons; and (b) provides supportive services that address the individual health, mental health, and other needs of such persons. The Secretary is authorized to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Such assistance is provided as (a) capital advances, and (b) contracts for project rental assistance. This assistance may be used to finance the acquisition with or without rehabilitation (group homes only), construction or rehabilitation of housing, including the acquisition of property from the Resolution Trust Corporation (group homes and independent living facilities), to be used as supportive housing for persons with disabilities and may include real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

The Secretary is directed to take such actions as may be necessary to ensure that (a) assistance made available under this section will be used to meet the special needs of persons with disabilities by providing a variety of housing options, ranging from group homes and independent living facilities to dwelling units in multifamily housing developments, condominium housing, and cooperative housing; and (b) supportive housing for persons with disabilities assisted under this section shall (1) provide persons with disabilities occupying such housing with supportive services that address their individual needs; (2) provide such persons with opportunities for optimal independent living and participation in normal daily activities, and (3) facilitate access by such persons to the community at large and to suitable employment opportunities within such community.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, (Pub. L. 101–507, approved November 5, 1990 (Fiscal Year 1991 Appropriations Act) provides $106,709,000 for capital advances under section 811 (including 500 units for persons disabled as a result of infection with the human acquired immunodeficiency virus (HIV)) and $104,000,000 for project rental assistance (including assistance for 500 units of housing for persons disabled as a result of infection with the HIV). Of the amounts available, up to $5,000,000 shall be available for contracts for technical assistance in accordance with section 811(j)(1). The NAH Act and the Fiscal Year 1991 Appropriations Act contain differing provisions for implementing the Supportive Housing for Persons with Disabilities Program. The NAH Act defers initiation of the Program until FY 1992, while the appropriation contemplates conversion to the new Program in FY 1991. In order to permit the funding of supportive housing for persons with disabilities in FY 1991 and best effectuate the purposes of both the NAH Act and the appropriation, the Department has decided to publish this rule as interim. A companion Notice of Funding Availability (NOFA) is published elsewhere in today's **Federal Register**. The NOFA provides complete information regarding eligibility, submission requirements, available capital advance amounts, selection criteria and application processing (including how to apply and how selections will be made). A checklist of steps and exhibits involved in the application process appears in the application package mentioned in the NOFA. Remaining requirements of this program, which are not necessary for fund reservation (*e.g.*, capital advances, project rental assistance contracts and management requirements) will be the subject of a proposed rule (also under part 890) which will be published later this year. A NOFA for the 500 units of housing for persons disabled as a result of infection with the HIV will also be published later.

1. Forms of Assistance

(a) *General/Capital Advances.* Capital advances provided under this section shall bear no interest and their repayment shall not be required so long as the housing remains available for very low-income persons with disabilities for not less than 40 years. Such advance shall be in an amount calculated in accordance with the development cost limit established in section 811(h) of the NAH Act.

(1) Development Cost Limits. In general, the Secretary shall periodically establish development cost limits by market area for various types and sizes of supportive housing for persons with disabilities by publishing a notice of the cost limits in the **Federal Register**. The cost limits shall reflect:

(i) The cost of acquisition, construction, or rehabilitation of supportive housing for persons with disabilities that (A) meets applicable state and local housing and building codes; and (B) conforms with the design characteristics of the neighborhood in which it is to be located;

(ii) The cost of movables (*e.g.*, movable equipment) necessary to the basic operation of the housing, as determined by the Secretary;

(iii) The cost of special design features necessary to make the housing accessible to persons with disabilities;

(iv) The cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities;

(v) The cost of congregate space (hereinafter referred to as community space) necessary to accommodate the provision of supportive services to persons with disabilities;

(vi) If the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; and

(vii) The cost of land, including necessary site improvement.

In establishing development cost limits for a given market area, the Secretary shall use data that reflect currently prevailing costs of acquisition, construction, or rehabilitation, and land acquisition in the area.

(2) RTC properties. In the case of existing housing and related facilities from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)), the cost limits shall include (i) the cost of acquiring such housing, (ii) the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and (iii) the cost of the land on which the housing and related facilities are located.

(3) Annual adjustments. The Secretary is required to adjust the cost limits not less than once annually to reflect changes in the general level of acquisition, construction or rehabilitation costs.

(4) Incentives for savings. The Secretary shall use the development cost limits (adjusted by locality) to calculate the initial fund reservation amount of the capital advance to be made available to individual Owners. Owners whose HUD-approved actual development costs are less than the initial fund reservation amount of the capital advance shall be entitled to retain 50 percent of the savings in their Replacement Reserve Account (referred to in section 811(h)(4)(A) as a special project account). Such percentage shall be increased to 75 percent for Owners which add energy efficiency features which (i) exceed the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; (ii) substantially reduce the life-cycle cost of the housing; (iii) reduce gross rent requirements; and (iv) enhance tenant comfort and convenience. The Replacement Reserve Account may only be used as approved by HUD for repairs or replacements in or capital improvements of the project.

(5) Use of funds from other sources. An Owner may voluntarily provide funds from non-Federal sources for amenities and other features of appropriate design and construction suitable for supportive housing for persons with disabilities if the cost of such amenities is (1) not financed with the capital advance, and (2) is not taken into account in determining the amount of Federal assistance or tenant payment (section 811(h)(5) refers to this as rent contribution of tenants). Any funds borrowed (e.g., for services or construction) from other sources generally would not be acceptable and in any case would require HUD approval. The Department plans to issue, in July 1991, a proposed rule under part 890 covering these additional requirements regarding capital advances.

(b) *Project rental assistance contracts.* Project rental assistance contracts obligate the Secretary to make monthly payments to cover any part of the HUD-approved operating costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income persons with disabilities that are not met from project income. The annual contract amount for any project shall not exceed the HUD-approved annual operating budget for all units so occupied and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the annual contract amount if the sum of the project income and the amount of assistance payments available are inadequate to provide for reasonable HUD-approved project operating costs. In the case of an intermediate care facility which is the residence of persons assisted under title XIX of the Social Security Act, project income shall include the same amount as if such person were being assisted under title XVI of the Social Security Act.

2. Tenant Payment

A very low-income person shall make a tenant payment for a dwelling unit assisted under this section the highest of the following amounts, rounded to the nearest dollar: (a) 30 percent of the person's adjusted monthly income, (b) 10 percent of the person's monthly income, or (c) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated; except that the gross income of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act shall be the same amount as if the person were being assisted under title XVI of the Social Security Act. If the person's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under (iii) above shall be the amount resulting from one application of the percentage.

3. Term of Commitment

All units in housing assisted under section 811 shall be made available for occupancy by very low-income persons with disabilities for not less than 40 years. The initial term of a contract entered into for project rental assistance shall be 240 months. The Secretary shall, to the extent approved in appropriations acts, extend any expiring contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

4. Applications/Selection Criteria

(a) *Applications.* Funds made available under section 811 will be allocated by the Secretary among approvable applications submitted by private nonprofit organizations (*i.e.*, Sponsor(s)). The Sponsors whose applications are selected by HUD will form single-purpose private nonprofit corporation owners (*i.e.*, the Owner, which shall receive the section 811 assistance). A NOFA (discussed above under B) for Supportive Housing for Persons with Disabilities is published elsewhere in today's **Federal Register**. Applications for assistance under part 890 should be submitted by the applicant (Sponsor) in the form described in the NOFA. The NOFA provides complete information regarding the eligibility, available amounts, application submission requirements, selection criteria, deadline date for receipt of applications, and application processing. A checklist of steps and exhibits involved in the application process appears in the application package.

(b) *Selection Criteria.* The Secretary is required to establish selection criteria for assistance under section 811, which shall include:

(1) The ability of the applicant to develop and operate the proposed housing;

(2) The need for housing for persons with disabilities in the area to be served;

(3) The extent to which the proposed design of the housing will meet the special needs of persons with disabilities;

(4) The extent to which the applicant has demonstrated that the necessary supportive services will be provided on a consistent, long-term basis;

(5) The extent to which the proposed design of the housing will accommodate the provision of such services;

(6) The extent to which the applicant has control of the site of the proposed housing; and

(7) Such other factors as the Secretary determines to be appropriate to ensure that funds made available under section 811 are used effectively.

To this list of selection criteria, the Secretary has added subcriteria to explain the statutory criteria and also additional criteria such as the Sponsor's financial capacity and experience in housing and/or serving minorities (§ 890.300)(c)).

5. Tenant Selection

An Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are satisfactory to the Secretary as (a) consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and (b)

reasonably related to program eligibility and an applicant's (tenant's) ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Notwithstanding any other provision of law, an Owner may, with the approval of the Secretary, limit occupancy within housing developed under this section to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment.

6. Technical Assistance

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under section 811.

7. Miscellaneous Provisions

(a) *Owner deposit (Minimum Capital Investment).* The Secretary may require an Owner to deposit an amount not to exceed $10,000 in a special escrow account to assure the Owner's commitment to the housing. If construction starts within the initial 18 months of the fund reservation, HUD will waive one-half of the Minimum Capital Investment which would be required under the aforementioned formula at the time of initial closing. If final closing occurs within six months after construction completion, HUD will approve the return of all remaining funds not used to cover operating deficits during the first three years of operation. If final closing does not occur within six months after project completion, unless extended by the Field Office for up to two months due to justifiable delay, the balance remaining at the end of three years will not be returned and shall be deposited in the Replacement Reserve Account.

(b) *Civil Rights Compliance.* Each Owner shall certify, to the satisfaction of the Secretary, that assistance made available under this section will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964, the Fair Housing Act and other Federal, state, and local laws prohibiting discrimination and promoting equal opportunity.

(c) *Notice of Cancellation and Appeal.* The Secretary will notify an Owner not less than 30 days prior to cancelling any reservation of assistance provided under section 811. During the 30-day period following the receipt of a notice under the preceding sentence, an Owner may appeal the proposed cancellation. Such appeal, including review by HUD, shall be completed not later than 45 days after the appeal is filed.

(d) *Labor Standards.* Under section 811(j)(6) of the NAH Act, all laborers and mechanics employed by contractors and subcontractors in the construction of housing assisted under this part and "designed for dwelling use by 12 or more persons with disabilities" shall be paid prevailing wage rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. By reason of Davis-Bacon wage rate applicability, the overtime requirements of the Contract Work Hours and Safety Standards Act also apply. HUD may waive these requirements where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purposes of lowering the costs of construction and HUD determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction.

Section 811(k)(1) of the NAH Act defines "person with disabilities" in part as "a household of one or more persons at least one of whom is an adult who has a disability" and as also including "two or more persons with disabilities living together * * *." However, Congress's definition of "group home" in section 811(k)(1) limits (except in cases of waiver) group homes to single family structures "designed or adapted for occupancy by not more than 8 persons with disabilities." It is apparent that in the context of this provision regarding the capacity of the supportive housing facility, the term "person with disabilities" refers to the number of individuals being served, rather than the number of households composed of persons living together, since each group home contains only one group of persons with disabilities living together. Similarly, the definition of "independent living facility" in section 811(k)(4) refers to a "project designed for occupancy by not more than 24 persons with disabilities (except in cases of waiver) in separate dwelling units * * *."Accordingly, HUD concludes that in the statutory Davis-Bacon provision, the phrase "designed for dwelling use by 12 or more persons with disabilities" must be read to refer to facilities designed for 12 or more individuals. Hence, an independent living facility containing six units that are each designed for two individuals would be subject to Davis-Bacon wage rates, as would a group home for which the eight-person limit has been waived, if it is designed for dwelling use by 12 or more individuals.

(e) *Site Control.* An applicant may obtain ownership or control of a suitable site different from the site specified in the initial application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for assistance, the assistance shall be recaptured and reallocated. All sites are subject to HUD's environmental review to determine if acceptable/approvable.

(f) *OMB Circular A–110.* The Department requests comments regarding the use of OMB Circular No. A–110, entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations—Uniform Administrative Requirements" for this program. Grants (but not loans) to non-profit organizations are subject to A–110. Capitol advances provided under the Supportive Housing for Persons with Disabilities Program have features of both loans and grants. For example, the capital advance resembles a loan because it is subject to repayment, unless the Owner makes all units in the project available to very low-income elderly persons for the full 40-year period. Previously, the Section 202 Program provided direct loans and was not subject to A–110. Section 811 of the NAH Act and its legislative history do not give any guidance on the incidental effects (e.g., applicability to A–110) of the change in assistance to capital advances. If A–110 applied to this program, the current development team approach to construction/rehabilitation would be replaced with competitive procurement. After considering public comments, the Department intends to resolve this issue in either the final rule for this program or as a part of the common rule for A–110 (which is currently being prepared by the Office of Management and Budget).

(g) *Uniform Relocation Act.* Section 890.260(e) (Displacement, relocation and real property acquisition) contains policies necessary to conform part 890 to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and the government-wide implementing regulations at 49 CFR part 24.

Effective April 2, 1989, the URA was amended to, among other things, expand coverage. Under the current rules (see HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition), all persons (families, individuals, businesses, nonprofit organizations and farms) displaced on or after April 2, 1989 as a direct result of rehabilitation, demolition or acquisition (publicly or privately

undertaken) for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.

The URA and the regulations at 49 CFR part 24, however, do not directly create eligibility for relocation assistance (as a "displaced person") for a tenant-occupant who is permitted to remain in the property but who moves from the property rather than pay an "excessive" rent upon completion of a project (economic displacement); who is required to relocate temporarily, but not permanently, while the project is underway; or who must move permanently to other space in the building/complex.

Therefore, to protect such tenant-occupants, and ensure consistency with other HUD-assisted programs, § 890.260(e) would, by regulation, provide that a tenant, who moves permanently because the terms and conditions of continued occupancy, temporary relocation or relocation within the building/complex are unreasonable, will qualify as a "displaced person" who is entitled to relocation assistance at levels identical to those required in 49 CFR part 24.

Paragraph § 890.260(e)(1) contains standard HUD policy directing Sponsors and Owners to take all reasonable steps to minimize displacement.

To qualify for a capital advance under part 890, the Sponsor/Owner must certify that it will comply with the URA, implementing regulations at 49 CFR part 24 and the provisions of § 890.260(e). The Sponsor/Owner must ensure such compliance notwithstanding any third party's contractual obligation to the Sponsor/Owner to carry out such requirements.

(h) Lead-based paint. Section 890.260(f) reflects the same lead-based paint requirements as 24 CFR 885.740(f). The Department is currently engaged in the re-drafting of part 35 pursuant to Secretarial direction (which will also revise § 890.260(f)). The Department anticipates completing the lead-based paint rulemaking shortly.

(i) Section 890.230 generally reflects existing site and neighborhood standards in § 885.730, with the exception of the undue concentration standard in § 885.730(d). The Department is revisiting the issue in response to a recent challenge to how the undue concentration standard has been implemented in practice. In *La Plaza Defense League* v. *Kemp,* 742 F. Supp. 792 (S.D.N.Y. 1990), it was ruled that the Department had acted contrary to its undue concentration regulations. In response to this decision, and to a report from the Office of Inspector General, the Department is studying undue concentration. When this interim rule is published as a final rule, any new language that is developed will be included.

C. Section by Section Summary of Part 890

In order to simplify program participation, part 890 reflects part 885's organization. Subpart A provides a general program description and the purpose and policy of the program. Subpart B provides application procedures and program requirements. Subpart C details selection of applications and duration of fund reservations. Subpart D provides for capital advance requirements. Subpart G provides for technical assistance. Each of these subparts is described below noting major differences from the Part 885 Program of Housing for Handicapped People. Subpart E has been reserved for project rental assistance contract requirements. Subpart F has been reserved for project management requirements.

1. Subpart A—General

Subpart A provides the purpose and policy of section 811 of NAH Act and statutory definitions (*e.g.,* group home, person with disabilities, supportive housing for persons with disabilities, independent living facility (this definition was recently amended by the Dire Emergency Supplemental Appropriations Act to cover projects designed for occupancy by not more than 24 persons with disabilities unless waived by the Secretary (811(k)(4) of the NAH Act previously covered projects designed for occupancy by not more than 20 persons), owner, private nonprofit organization and very low-income) as well as additional definitions needed to administer the program (*e.g.,* operating costs, project account, rehabilitation and start-up expenses).

2. Subpart B—Application Procedures and Program Requirements

Subpart B provides application procedures and program requirements. It includes allocation of authority in accordance with 24 CFR part 791, notice of fund availability and invitation for applications. Also covered are project standards, project size limits, design and cost standards, prohibited facilities, site and neighborhood standards, prohibited relationships, application contents, and other Federal requirements.

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). This program rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest, is a new statutory requirement for a certification by the appropriate State or local agency that the provision of services identified in the application is well designed to serve the needs of persons with disabilities. In order to fulfill this requirement, Sponsors must submit one copy of their application to the appropriate State or local agency identified by the Field Office in the application package simultaneously with their submission of their application to the appropriate Field Office. Also included with the application package will be a certification form that the Sponsor shall transmit to the State or local agency, along with its application, for the State or local agency to indicate that it has reviewed the supportive services plan and whether or not the provision of services is well designed to meet the needs of the proposed disabled population. Once the State or local agency completes its review of the supportive services plan, it must complete the certification form and forward it to the Field Office within 30 days of the Section 811 application deadline date. Unlike the Section 202 Program of Housing for Handicapped People where the State agency's review of the service plan description was optional, in the Section 811 program, the State or local agency's certification that the provision of services is well designed to meet the needs of the proposed residents is required for

approval of the Sponsor's application. Applications without such a certification will not be funded.

HUD has also revised its group home cost limits. The following chart provides the new group home cost limits:

Group Home Cost Limits

Number of residents	Type of disability	
	Physical or develop-mental disability	Chronic mental illness
3	$128,710	$124,245
4	137,730	131,980
5	146,750	139,715
6	155,760	147,450
7	162,876	153,576
8	168,126	157,731
9	170,840	160,920
10	178,000	167,000
11	185,160	173,070
12	192,320	179,150
13	199,920	185,360
14	207,510	191,610
15	215,100	197,830

The group home cost limits listed above are those which will be used for the development of group homes. A cost limit for a three (3) person group home has been added due to the Department's recent experience with requests to develop 3-person group homes based on the availability of single family homes with 3 bedrooms.

Furthermore, the seven (7) and eight (8) person group home limits have been increased for both disability categories. Previously, the cost limits for group homes with more than six residents were based on an assumption of double occupancy bedrooms, to encourage the development of group homes that retained a residential scale. Since the statutory limit on the number of residents in a group home has been set at 8 residents with larger homes of up to 15 residents approvable on a case-by-case exception basis, the Department is establishing 7 and 8 person cost limits which would support single occupancy bedrooms.

In order to accommodate areas which have high land costs, Regional Offices may approve requests by Field Offices for increases of up to 10 percent in cost limits in areas which can provide convincing documentation that high land costs limit or prohibit project feasibility. An example of acceptable documentation is evidence of at least three land sales which have actually taken place (listed prices for land are not acceptable) within the last two years in the area in which the project is to be built. The sites for which sale prices are given must be reasonably comparable to the project site. The average cost of the documented sales must exceed 7 percent of the development cost limit for which the project in question is eligible for approval of an increase to be considered.

All development cost limits under the new program provide more funds for actual construction since there will be approximately a 4 percent savings due to the elimination of construction interest as a development cost.

In addition, the percentages by which the Assistant Secretary may increase the cost limits in any geographic area where the cost levels require an increase and also on a project-by-project basis are now up to 140 percent and up to 160 percent, respectively.

Taken as a whole, the Department is confident that these measures respond to the concerns that the existing cost limits have not been adequate to fund the development of housing for persons with disabilities.

3. Subpart C—Selection of Applications and Duration of Fund Reservation

Subpart C provides for the selection of applications and duration of fund reservation. It provides guidance on the review of applications for fund reservations and approval of applications.

4. Subpart D—Capital Advances

Subpart D provides preliminary guidance on repayment of capital advance financing. Additional necessary provisions for program operation will be the subject of a proposed rule.

5. Other

Subpart E is reserved for requirements relating to project rental assistance contracts. Subpart F is reserved for requirements relating to project management. Subpart G indicates the Secretary's authority to provide technical assistance.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing 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 and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued on February 17, 1969. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide capital advances to private nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Although small entities will participate in the program, the rule would not have a significant impact on them.

On February 26, 1990, the Department published an interim final rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and 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 interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the notice does not

involve the preemption of state law by Federal statute or regulation and does not have federalism impacts.

This interim rule was listed as item 1310 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17390) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

The collection of information requirements contained in this interim rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

The information collection requirements in this rule are those specified in the application for a capital advance (see application contents, § 890.265). The exhibits required in the application (§ 890.265(c)) are primarily those previously required in the Section 202 Direct Loan Program, with some additional items that are mandated by the provisions of section 811 of the NAH Act (e.g., § 890.265 (b)(3), (c)(3), (c)(13) and (c)(20)). While the application requirements continue to include substantial documentation and narrative descriptions of the proposed project, and while the statute now requires more detailed site information at the application stage, the Department estimates no more than 50.7 burden hours in the new program. As described below, the burden may be less for many applicants.

Some forms previously required have been eliminated (e.g., Forms 93433 and 1732A) and certifications (e.g., § 890.265(c)(17)(25)) are substituted for some more lengthy exhibits previously required. In addition, the Department believes many applicants will be able to complete their applications in fewer hours than estimated due to Field Office workshops, previous participation in the section 202 direct loan application process and redesigned exhibits (e.g., the exhibit for § 890.265(c)(12)) is less time consuming because much of the information may be resubmitted with minor updates from previous year write-ups (application exhibits)).

The Department expects approximately 60% of the approximately 330 applications for the new Supportive Housing for People with Disabilities Program or 198 applications, to be from previous participants in the Section 202 Direct Loan Program. Sponsors who have applied in previous years will be able to submit previous write-ups (previous application exhibits) or update all or part of previously-submitted exhibits on applicant experience (§ 890.265(c)(7)), financial capacity (§ 890.265(c) (3) and (12)), and similar issues (see e.g., § 890.265(c)(4)–(9)). New applicants who are not owners or managers of HUD projects or who have few such projects to report, will be able to complete exhibits on status of their existing HUD projects without incurring the estimated burden hours associated with applicants who have numerous HUD projects (see e.g., § 890.265(c) (5), (7), and (12)(iv)). Finally, for that large portion of section 811 applicants who are currently recipients of funding under Federal, State, or local programs that underwrite supportive services, the exhibit related to provision of supportive services (§ 890.265(c)(15)) can be adapted from other similar materials submitted to those funding agencies.

Any nonprofit organization with experience in providing housing or services for people with disabilities will have readily available the information needed to complete exhibits or to serve as exhibits on community ties (§ 890.265(c)(4)), experience in providing housing or services (§ 890.265(c) (5), (7) and (8)), experience in serving minorities (§ 890.265(c)(7)(ii)), and description or residents and supportive services—a total of six exhibits as itemized in the Application Package distributed to potential applicants.

Given the substantial funding being provided to successful applicants, and the need to assure that applicants selected will be able to fulfill the 40-year obligation to provide housing for the eligible population, the Department believes it is in the public interest to require an application package with this level of documentation. Without the specific information provided by these exhibits, it would not be possible to satisfactorily evaluate the proposed projects and the capacity of the applicants.

The sections of the interim rule identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Information Collection Matrix

TABLE1.—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection (application submission requirements)	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Part 1, Exhibit 1, Form HUD–92013 (OMB 2502–0029)	890.265(b)	350	1	350	1.0	350
Exhibit 2, Information on Consultant	Not subject to OMB approval per OMB 5/1/84					
Exhibit 3, Evidence of Sponsor's nonprofit status	890.265(c)(2)	350	1	350	2.0	700
Exhibit 4, Evidence of Sponsor's authority to sponsor project	890.265(c)(3)	350	1	350	1.0	350
Part 2, Exhibit 5, Description of community ties	890.265(c)(4)	350	1	350	0.5	175
Exhibit 6, Form HUD–2530 (OMB 2502–0118)	890.265(c)(5)	350	1	350	0.6	210
Exhibit 7, Description of legal actions against Sponsor	890.265(c)(6)	350	1	350	0.5	175
Exhibit 8, Description of experience providing housing	890.265(c)(7)	350	1	350	3.0	1,050
Exhibit 9, Description of past involvement	890.265(c)(8)	350	1	350	3.0	1,050
Exhibit 10, Board Resolution to support project	890.265(c)(9)	350	1	350	0.4	140
Exhibit 11, Description of experience serving minorities	890.265(c)(10)	350	1	350	1.0	350
Part 3, Exhibit 12, Statement on other 811 or 202 applications submitted	890.265(c)(11)	350	1	350	2.0	700
Exhibit 13, Estimate of start-up expenses	890.265(c)(12)	350	1	350	4.0	1,400
Exhibit 14, Evidence of ability to provide funds for project, (HUD–92290 OMB 2502–0160).	890.265(c)(13)	350	1	350	4.0	1,400
Exhibit 17, Statement on relocation (OMB 2502–0433)	890.265(c)(14)(i)(A)(4)	[1] 15	1	15	4.0	60
Part 5, Exhibit 18, Description of proposed design of project	890.265(c)(14)(v)	350	1	350	4.0	1,400
Exhibit 19, Schematic drawings	890.265(c)(14)(v)	350	1	350	2.0	700
Part 6, Exhibit 20, Description of residents and supportive services (HUD–92013E OMB 2502–0232).	890.265(c)(15)&(16)	350	1	350	8.0	2,800

TABLE1.—TABULATION OF ANNUAL REPORTING BURDEN—Continued

Description of information collection (application submission requirements)	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Part 7, Exhibit 21, Equal Opportunity certifications		Exempt per 5 CFR Part 1320				
Exhibit 22, CHAS certification from local public official	890.265(c)(19)	[2] 350	1	350	0.4	140
Exhibit 23, Certification on provision of services	890.265(c)(20)	350	1	350	0.4	140
Exhibit 24, Certification on E.O. 12372	890.265(c)(21)	350	1	350	0.4	140
Exhibits 25–29, Certifications (SF–424 OMB 0348–0043)		Exempt per 5 CFR Part 1320				
Exhibit 30, Information on Intermediate Care Facilities	890.265(c)(14)(v)	[3] 10	1	10	2.0	20
Totals		350	1	350	50.7	15,725

[1] Based on experience, no more than 5 percent of the applications will involve relocation.
[2] For Fiscal Year 1991, the certification from the local public official will not be required. The respondent will only be required to state, "Not applicable". The certification will be required beginning in Fiscal Year 1992.
[3] Based on experience, no more than 3 percent of the applications will propose ICFs.

List of Subjects

24 CFR Part 750

Grant Programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security.

24 CFR Part 890

Disabled, Mental health programs, Civil rights, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends part 750 and adds a new 24 CFR part 890, as set forth below.

PART 750—DISCLOSURE AND VERIFICATION OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS AND PARTICIPANTS IN CERTAIN HOUSING ASSISTANCE PROGRAMS

1. The authority citation for Part 750 is revised to read as follows:

Authority: Sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); secs. 3, 6, 8, 17, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437f, 1437o, 1437(ee)); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec 7(d), sec. 811, National Affordable Housing Act (42 U.S.C. 8013), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 750.3 [Amended]

2. Section 750.3 is amended by revising paragraphs (i) through (l), and adding paragraphs (m) and (n), to read as follows:

* * * * *

(i) Part 889, Supportive Housing for the Elderly.

(j) Part 890, Supportive Housing for Persons with Disabilities.

(k) Part 900, section 23 Housing Assistance Payments Program—New Construction and Substantial Rehabilitation.

(l) Part 904, Low Rent Housing Homeownership Opportunities.

(m) Part 905, Indian Housing.

(n) Part 960, Admission to, and Occupancy of Public Housing.

3. In § 750.5, the introductory text is republished and the definitions *Assistance applicant, Entity applicant, Individual owner applicant,* and *Participant* are revised to read as follows:

§ 750.5 Definitions.

As used in this part:

Assistance applicant has the following meaning for the programs referred to in § 750.3:

(a) Parts 880, 881, 882, 883, 884, 885, 886, 887, 889, 890 and 900: A family that seeks rental assistance under the program.

(b) Part 904: A prospective homebuyer under the program.

(c) Part 905: A prospective tenant or homebuyer under the program.

(d) Part 960: A prospective tenant under the program.

* * * * *

Entity applicant means a partnership, corporation, or any other association or entity that seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, 886, 889 or 890. Entity applicant does not include a public entity, such as a PHA or State Housing Finance Agency.

* * * * *

Individual owner applicant means an individual who seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, 886, 889 or 890.

Participant has the following meaning for the programs referred to in § 750.3:

(a) Parts 880, 881, 882, 883, 884, 885, 886, 887, 889, 890 and 900: A family receiving rental assistance under the program.

(b) Part 904: A homebuyer under the program.

(c) Part 905: A tenant or homebuyer under the program.

(d) Part 960: A tenant under the program.

* * * * *

4. A new part 890 is added to chapter VIII, title 24 of the Code of Federal Regulations, to read as follows:

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

Subpart A—General

Subpart B—Application Procedures and Program Requirements

Authority: Sec. 811 of the National Affordable Housing Act (42 U.S.C. 8013) and sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 890.100 Purpose and policy.

(a) *Purpose.* The program under this part provides Federal capital advances under section 811 of the National Affordable Housing Act (the NAH Act) for development of housing projects serving persons with disabilities. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A capital advance made under this part shall be used to finance the acquisition with or without rehabilitation (group homes only), construction or rehabilitation of housing, including the acquisition of property from the Resolution Trust Corporation (group homes and independent living facilities), to be used as supportive housing for persons with disabilities and may include real property acquisition, site improvement, conversion, demolition, relocation, and other expenses of supportive housing for persons with disabilities.

(c) *Applicability.* This part applies to projects for persons with disabilities that receive capital advances and project rental assistance under section 811 of the National Affordable Housing Act.

§ 890.105 Definitions.

As used in this part—

Acquisition means the purchase (or otherwise obtaining title to) of existing structures to be used as group homes, including housing and related facilities from the Resolution Trust Corporation (group homes and independent living facilities). Property (other than from the RTC) is eligible for acquisition if at least 3 years have elapsed from the later of the completion of the project or the beginning of occupancy to the date of application for a section 811 fund reservation. Capital advances are not available in connection with facilities owned and operated by the Sponsor as housing for persons with disabilities.

Act means section 811 of the National Affordable Housing Act (42 U.S.C. 8013).

Affiliated entities means entities that the Field Office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors that have any identity of interest themselves or their principals.

Agreement to enter into project rental assistance contract (APRAC) means the agreement between the Owner and HUD which provides that, upon satisfactory completion of the project, HUD will enter into the PRAC with the Owner.

Annual income is defined in part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

Application means the application for a fund reservation, including all required forms and exhibits submitted in response to an invitation for such applications.

Assistant Secretary means the Assistant Secretary for Housing—Federal Housing Commissioner.

Assisted unit means a dwelling unit that is eligible for assistance under a PRAC.

Congregate space (hereinafter referred to as community space) means space for multipurpose rooms, common areas and other space necessary for the provision of supportive services. Community space does not include commercial areas.

Development cost means the cost of construction, rehabilitation of housing and related facilities, and of the land on which they are located, including necessary site improvements and such other expenses as may be determined by the Assistant Secretary properly to be attributable to the capital cost of the construction, rehabilitation or development of the housing and related facilities. Development cost also means the cost of acquiring existing housing and related facilities to be used as group homes, including acquisition of property from the Resolution Trust Corporation (group homes and independent living facilities), and the cost of rehabilitation, alteration, conversion or improvement, including the cost of the land on which the housing and related facilities are located.

Disabled household means a household composed of:

(1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;

(2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker or licensed physician) to be important to their care or well being; or

(3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part, with the deceased member of the household at the time of his or her death.

Field office means any HUD Area, Service, Insuring or Regional Office which is delegated authority to process applications under the section 811 program.

Group home means a single family residential structure designed or adapted for occupancy by not more than 8 persons with disabilities. The Secretary may waive the project size limit contained in the previous sentence if the Sponsor demonstrates that local market conditions dictate the development of a larger project. Not more than one home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

Household (eligible household) means a disabled household (as defined in § 890.105) that meets the project occupancy requirements approved by HUD and, if the household occupies an assisted unit, meets the very low-income

requirements described in § 813.102 of this chapter, as modified by the definition of annual income in this section.

Housing and related facilities means rental housing structures constructed, rehabilitated or acquired as permanent residences for use by disabled households. The term includes necessary community space. Except for intermediate care facilities for individuals with developmental disabilities, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Independent living facility means a project designed for occupancy by not more than 24 persons with disabilities, except for projects for the chronically mentally ill which are limited to 20 such persons. The Secretary may waive the 24-person limit if the Sponsor demonstrates that local market conditions dictate the development of a larger project, not to exceed 40 persons with disabilities. The project shall consist of separate dwelling units each of which includes a kitchen and a bath.

Independent public accountant means a certified public accountant or a licensed or registered public accountant, having no business relationship with the Owner or Sponsor except for the performance of audit, systems work and tax preparation. If not certified, the independent public accountant must have been licensed or registered by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970. In states that do not regulate the use of the title "public accountant", only certified public accountants may be used.

Operating costs means HUD-approved expenses related to the provision of housing and excludes expenses related to administering, or managing the provision of, supportive services. Operating costs include:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter.

(2) Maintenance expenses, including routine and minor repairs and groundskeeping.

(3) Security expenses.

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for families.

(5) Taxes and insurance.

(6) Allowances for reserves.

Owner means a private nonprofit corporation established by the Sponsor and which will receive a capital advance and project rental assistance payments to develop and operate, as its legal owner, supportive housing for persons with disabilities under this part. Private nonprofit organization means any incorporated private institution or foundation:

(1) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(2) Which has a governing board

(i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located (including persons with disabilities), and

(ii) Which is responsible for the operation of the housing assisted under this part; and

(3) Which is approved by the Secretary as to financial responsibility. Owner does not mean a public body or the instrumentality of any public body. The purposes of the Owner must include the promotion of the welfare of disabled persons. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Because of the nonprofit nature of the section 811 program, no officer or director, or trustee, member, stockholder or authorized representative of the Owner is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

Person with disabilities means a household composed of one or more persons at least one of whom is an adult who has a disability. A person shall be considered to have a disability if such person is determined to have a physical, mental, or emotional impairment which

(1) Is expected to be of long-continued and indefinite duration,

(2) Substantially impedes his or her ability to live independently, and

(3) Is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5) *i.e.*, if he or she has a severe chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age twenty-two;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitation in three or more of the following areas of major life activity:

(A) Self-care,

(B) Receptive and expressive language,

(C) Learning,

(D) Mobility,

(E) Self-direction,

(F) Capacity for independent living,

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong, or extended duration and are individually planned and coordinated.

A person shall also be considered to be disabled if he or she has a chronic mental illness, *i.e.*, if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions. Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of HIV are eligible for occupancy in section 811 projects designed for the physically disabled, developmentally disabled or chronically mentally ill, depending upon the nature of the person's disability. A person whose sole impairment is alcoholism or drug addiction (*i.e.*, who does not have a developmental disability, chronic mental illness or physical disability which is the disabling condition required for eligibility in an particular project) will not be considered to be disabled for the purposes of the section 811 program.

PRAC (project rental assistance contract) means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC.

Project account means a specifically identified and segregated account for each project which is established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PRAC each year.

Project rental assistance payment means the payment made by HUD to the Owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per unit operating expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit in an independent living facility when the utility allowance is

greater than the total tenant payment. A project rental assistance payment, known as a "vacancy payment", may be made to the Owner when an assisted unit (or bedroom in a group home) is vacant, in accordance with the terms of the PRAC.

Region means any one of the ten HUD Regions.

Rehabilitation means the improvement of the condition of a property from deteriorated and substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure must require 15 percent or more of the estimated development cost to rehabilitate the project to a useful life of 55 years.

Replacement Reserve Account means a project account into which specified funds are deposited and which may be used only with the approval of the Secretary for repairs, replacement and capital improvements to the project.

Secretary means the Secretary of Housing and Urban Development.

Sponsor means any private nonprofit entity:

(1) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor or individual;

(2) Which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom;

(3) Which has a governing board the membership of which is selected in a manner to assure that there is significant representation of the views of persons with disabilities; and

(4) Which is approved by the Secretary as to administrative and financial capacity and responsibility.

"Sponsor" does not mean a public body or the instrumentality of a public body. Because of the nonprofit nature of the section 811 program, no officer or director of the Sponsor is permitted to have any financial interest in any contract with the Owner in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever. The prohibition in the preceding sentence does not apply to any management contracts (including the management fees associated therewith) entered into by the Owner with the Sponsor or its nonprofit affiliate. In the case of a Sponsor or its nonprofit affiliate managing the project where persons are in a paid capacity with either the Sponsor or nonprofit affiliate, only two such persons would be permitted to serve as directors of the nonprofit organization (Owner) and only in a non-voting capacity.

Start-up expenses mean necessary costs (to plan a section 811 project) incurred by the Sponsor or Owner prior to the initial closing.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

Supportive housing for persons with disabilities means housing that is

(1) Designed to meet the special needs of persons with disabilities, and

(2) Provides supportive services that address the individual health, mental health or other special needs of such persons.

Tenant payment means the monthly amount payable by the household to the Owner equal to the greater of

(1) 30 percent of the household's monthly adjusted income,

(2) 10 percent of the household's monthly gross income, or

(3) If the household is receiving payments for welfare assistance from a public agency and as part of such payments, adjusted in accordance with the household's actual housing costs, is specifically designated by such agency to meet the household's housing costs, the portion of such payment which is so designated.

If the person's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (3) of this definition shall be the amount resulting from one application of the percentage. Where all utilities (except telephone) are supplied by the Owner, tenant payment equals total tenant payment. Where some or all utilities (except telephone) are not supplied by the Owner, tenant payment equals total tenant payment less the utility allowance.

Total tenant payment means the tenant payment made by the household to the Owner to cover its housing costs, including the cost of all utilities (except telephone).

Utility allowance means an amount equal to the estimate made or approved by HUD under applicable sections of this chapter (see 24 CFR parts 880, 881, 882, 883, 884 and 886) of the monthly costs of a reasonable consumption of utilities (except telephone) for the unit by an energy-conservative household of modest circumstances, consistent with the requirements of a safe, sanitary and healthful living environment. A utility allowance shall be used in cases where the cost of utilities (except telephone) is the responsibility of the household and not included in the tenant payment.

Utility reimbursement is defined in part 813 of this chapter.

Vacancy payment means the project rental assistance payment made to the Owner by HUD for a vacant assisted unit (or bedroom in a group home) if certain conditions are fulfilled, as provided in the PRAC. The amount of the vacancy payment is 80 percent of the HUD-approved per unit operating expense prorated based on the length of the vacancy period. No payment shall be made for a vacancy period longer than 60 days.

Very low-income has the same meaning as given the term "very low-income" under section 3(b)(2) of the United States Housing Act of 1937.

Subpart B—Application Procedures and Program Requirements

§ 890.200 Allocation of authority.

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for disabled households, less amounts set aside by Congress for specific types of projects, and for amendments of fund reservations made in prior years and for technical assistance.

§ 890.205 Notice of fund availability and invitation for applications.

(a) *Notice of fund availability.* Following an allocation of authority under § 890.200, HUD shall publish a Notice of Fund Availability (NOFA) in the **Federal Register** indicating:

(1) The amount of capital advance authority (and approximate number of units) made available for housing for disabled households within each allocation area;

(2) The date by which the Field Offices will publish Invitations for Applications for section 811 fund reservations;

(3) The deadline for receipt of applications; and

(4) Other appropriate guidance to prospective Sponsors.

(b) *Invitation for applications.* Each Field Office shall publish an Invitation for Applications for section 811 fund reservation in newspapers of general

circulation and any minority newspapers serving the Field Office jurisdiction. Immediately after the NOFA is published, the Field Office shall also notify minority media, organizations involved in housing and community development, and groups with special interest in housing for disabled households including the applicable state single point of contact (Executive Order 12372). Copies of the Invitation will be available in the Field Office. The Field Office will base its determination of the acceptance of each application for a fund reservation on the information provided in the application.

(c) The Invitation shall state:

(1) The area(s) where capital advance authority is being made available, the amount of such authority and the approximate number of units this amount is expected to assist.

(2) That copies of the applicable regulations, instructions, forms and other program information may be obtained at the Field Office.

(3) The time and place of the Field Office workshop.

(4) The date, time, and place applications will be accepted.

(5) The deadline date for receipt of applications.

§ 890.210 Project standards.

(a) *Property standards.* Projects under this part must comply with HUD Minimum Property Standards.

(b) *Minimum group home standards.* Each group home must provide a minimum of 290 square feet of prorated space for each resident, including a minimum area of 80 square feet for each resident in a shared bedroom (with no more than two residents occupying a shared bedroom) and a minimum area of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home. If the project involves acquisition (with or without rehabilitation), the structure must at least be in compliance with applicable State requirements. In the absence of such requirements, the above standards shall apply.

(c) *Accessibility requirements.* (1) Projects under this part must comply with the Uniform Federal Accessibility Standards (24 CFR part 40, appendix A), HUD's regulations implementing section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100. A group home under this part is not a covered multifamily dwelling as defined by the Fair Housing Act and is therefore not subject to the design and construction requirements of the Fair Housing Act but is subject to the other requirements of the Fair Housing Act.

(2) All entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

(3) In projects for chronically mentally ill individuals, a minimum of ten percent of all dwelling units in an independent living facility (or ten percent of all bedrooms and bathrooms in a group home, but at least one of each such space), must be designed to be accessible or adaptable for persons with disabilities.

(4) In projects for developmentally disabled or physically disabled persons, all dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities. A project involving acquisition and/or rehabilitation may provide a lesser number if:

(i) The cost of providing full accessibility makes the project financially infeasible;

(ii) Less than one-half of the intended occupants have mobility impairments; and

(iii) The project complies with the requirements of 24 CFR 8.23.

(5) For the purposes of paragraphs (c)(2), (3) and (4) of this section, "Accessible" and "Adaptable" are defined in 24 CFR part 40, appendix A.

§ 890.215 Project eligibility and size limits.

(a) *Maximum project size.* Projects under this part are subject to the following project size limits:

(1) Group homes may be designed to serve no more than 8 persons with disabilities on one site. Not more than one home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

(2) Independent living facilities may have no more than 24 persons with disabilities, except that projects for the chronically mentally ill are limited to 20 such persons. The project shall consist of separate dwelling units each of which includes a kitchen and a bath. Units with three or more bedrooms may be developed to serve only disabled households of one or two disabled parents with children.

(3) Other types of eligible projects include dwelling units in multifamily housing developments, condominium housing and cooperative housing.

(b) *Additional limits.* Based on the amount of capital advance authority appropriated for a fiscal year, HUD may impose additional limits on the number of units or residents that may be proposed under an application for a fund reservation. This unit limit will be published in the annual NOFA.

(c) *Exceptions.* (1) On a case-by-case basis, HUD may approve group homes that do not comply with the project size limits prescribed in paragraphs (a)(1) or (b) of this section. HUD may approve a group home of up to 15 residents if the Sponsor demonstrates:

(i) The increased number of people is necessary for the economic feasibility of the project;

(ii) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(iii) A project of the size proposed can be successfully integrated into the community; and

(iv) A project of the size proposed is marketable in the community.

(2) On a case-by-case basis, HUD may approve an increase in the 24-person limit set forth in paragraph (a)(2) of this section and the limits set forth in paragraph (b) of this section not to exceed 40 persons with disabilities based on the same criteria set forth in paragraph (c)(1) (i) through (iv) of this section.

§ 890.220 Design and cost standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas and jacuzzis. Dishwashers, trash compactors, and washers and dryers in individual units will not be funded in independent living facilities. The use of durable materials to control or reduce maintenance, repair and replacement costs is not an excess amenity.

(b) *Unit sizes.* For independent living facilities, HUD will establish limits on the size of units and number of bathrooms, based on the number of bedrooms that are in the unit.

(c) *Community spaces.* The cost of construction of community spaces may not exceed 10 percent of the total cost of construction, except as provided in paragraph (d) of this section.

(d) *Exceptions.* HUD may approve a project that does not comply with the design and cost standards of paragraphs (a) through (c) of this section if:

(1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or

(2) The proposed project involves acquisition and rehabilitation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 890.245.

§ 890.225 Prohibited facilities.

Project facilities may not include commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. Except for office space used by the Owner exclusively for the administration of the project, project facilities may not include office space.

§ 890.230 Site and neighborhood standards.

All sites must meet the following site and neighborhood requirements:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 and implementing HUD regulations.

(c) New construction sites must meet the following site and neighborhood requirements:

(1) The site must not be located in an area of minority concentration except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(2) A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority disabled households, in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or

(ii) the project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).

(3)(i) *Sufficient* does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority disabled families and in relation to the racial mix of the locality's population.

(ii) Units may be considered to be *comparable opportunities* if they have the same household type (disabled household) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority disabled families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority disabled households who wish to find housing outside areas of minority concentration.

(E) Minority disabled households have benefitted from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisition of units for use as assisted housing units) undertaken to expand choice for minority households outside areas of minority concentration.

(F) A significant proportion of minority disabled households has been successful in finding units in non-minority areas under the Section 8 Certificate and Housing Voucher programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the *overriding housing needs* criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An *overriding housing need*, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(e) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(f) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for very low-income workers, must not be excessive.

(g) Projects must be located in neighborhoods where other family housing is located. Projects may not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day-care centers for persons with disabilities, workshops, medical facilities, or other housing primarily serving persons with disabilities. Not more than one group home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

§ 890.235 Prohibited relationships.

(a) *Conflicts of interest.* Officers, directors, trustees, members, stockholders and authorized representatives of the Sponsor, and officers and directors of the Owner may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development and operation of the project. Management contracts (including associated management fees) entered into by the Owner with the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than two persons salaried by the Sponsor or management affiliate serve as nonvoting directors on the Owner's board of directors.

(b) *Interest in earnings.* No part of the net earnings of the Owner or Sponsor may inure to the benefit of any private shareholder, contributor, or individual.

(c) *Control of Owner or Sponsor.* Neither the Owner nor the Sponsor may be controlled by, or under the direction of, persons or entities seeking to derive profit or gain as a result of activities undertaken by the Owner or Sponsor.

(d) *Identity of interest.* A person or an entity (including an affiliated entity) may not provide technical services to a project in more than one of the following capacities: attorney, architect, contractor, housing consultant, management agent, or seller of the site for the project, except that the same person or entity may serve a project as management agent and housing consultant.

§ 890.240 Amount and terms of capital advances.

(a) *Amount of financing.* The amount of capital advances approved shall be the amount stated in the notification of fund reservation, including any adjustment required by HUD before the final closing. The amount of the capital advance may not exceed the smallest of the amounts provided in § 890.245.

(b) *Estimated development cost.* The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Sponsor under § 890.220.

§ 890.245 Development cost limits.

(a) General. The Secretary shall periodically establish development cost limits by market area for various types and sizes of supportive housing for persons with disabilities by publishing a notice of cost limits in the **Federal Register.** The cost limits for independent living facilities shall reflect:

(1) The cost of acquisition, construction, or rehabilitation of supportive housing for persons with disabilities that:

(i) Meets applicable state and local housing and building codes and

(ii) Conforms with the design characteristics of the neighborhood in which it is to be located;

(2) The cost of movables (*e.g.*, movable equipment) necessary to the basic operation of the housing, as determined by the Secretary;

(3) The cost of special design features necessary to make the housing accessible to persons with disabilities;

(4) The cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities;

(5) The cost of community space necessary to accommodate the provisions of supportive services to persons with disabilities;

(6) If the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; and

(7) The cost of land, including necessary site improvement.

(b) For independent living facilities, the total development cost of the property or project attributable to dwelling use (less the incremental development cost and capitalized operating costs described in this paragraph) may not exceed:

(1) For independent living facilities without elevators:

$28,032 per family unit without a bedroom;
$32,321 per family unit with one bedroom;
$38,979 per family unit with two bedrooms;
$49,893 per family unit with three bedrooms;
$55,583 per family unit with four or more bedrooms.

(2) For independent living facilities with elevators:

$29,500 per family unit without a bedroom;
$33,816 per family unit with one bedroom;
$41,120 per family unit with two bedrooms;
$53,195 per family unit with three bedrooms;
$58,392 per family unit with four or more bedrooms.

For group homes:

Number of residents	Type of disability	
	Physical or developmental disability	Chronic mental illness
3	$128,710	$124,245
4	137,730	131,980
5	146,750	139,715
6	155,760	147,450
7	162,876	153,576
8	168,126	157,731
9	170,840	160,920
10	178,000	167,000
11	185,160	173,070
12	192,320	179,150
13	199,920	185,380
14	207,510	191,610
15	215,100	197,830

In order to accommodate areas which have high land costs, Regional Offices may approve requests by Field Offices for increases of up to 10 percent in cost limits in areas which can provide convincing documentation that high land costs limit or prohibit project feasibility. An example of acceptable documentation is evidence of at least three land sales which have actually taken place (listed prices for land are not acceptable) within the last two years in the area in which the project is to be built. The sites for which sale prices are given must be reasonably comparable to the project site. The average cost of the documented sales must exceed 7 percent of the development cost limit for which the project in question is eligible for approval of an increase to be considered. HUD will periodically establish cost limits for various sizes of group homes by publishing a notice of the cost limits in the **Federal Register.** The cost limits will reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the minimum group home requirements of § 890.210(b); the accessibility requirements of § 890.210(c); design and cost standards of § 890.220 and other design requirements applicable to group homes under this part. HUD will provide factors for adjusting the group home standard to reflect such factors as the design requirements of the specific disabled population to be served and state and local requirements. To develop the cost limit for group homes, HUD will use commercially available construction cost indices and construction cost data for recently completed comparable group homes.

(d) Increased capital advance limits. (i) The Assistant Secretary may increase the cost limits set forth in paragraphs (b)(1) and (2) and (c) of this section by up to 140 percent in any geographic area where the cost levels require, and may

increase the cost limits by up to 160 percent on a project-by-project basis.

(ii) If the Assistant Secretary finds that high construction costs in Alaska, Guam, or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the cost limits provided in paragraphs (b) and (c) of this section, the amount of capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(e) Rehabilitation projects—additional limits. A capital advance that involves a project to be rehabilitated is subject to the following additional limits:

(1) Property held in fee. If the Sponsor is the fee simple owner of a property unencumbered by a mortgage, the capital advance amount may not exceed 100 percent of the cost of the proposed rehabilitation.

(2) Property subject to existing mortgage. If the Sponsor owns the property subject to an outstanding indebtedness that is to be refinanced with part of the capital advance, the maximum capital advance amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before the rehabilitation, as determined by HUD.

(f) Property to be acquired. If the property is to be acquired by the Owner from an entity other than the Sponsor, and the purchase price is to be financed with a part of the section 811 capital advance, the maximum capital advance amount may not exceed the cost of the rehabilitation plus the portion of the purchase price that does not exceed the fair market value of such land and improvements before the rehabilitation, as determined by HUD.

(g) Leaseholds. If a capital advance is secured by a leasehold estate rather than by a fee simple estate, the amount of the capital advance attributable to the cost of the property may not exceed the value of the leasehold estate.

(h) Annual Adjustments. The Secretary shall adjust the cost limits not less than once annually to reflect changes in the general level of acquisition, construction or rehabilitation costs.

(i) Prevailing cost data. In establishing development cost limits for a given market area, the Secretary shall use data that reflect currently prevailing costs of acquisition, construction, or rehabilitation, and land acquisition in the area.

(j) RTC Properties. In the case of existing housing and related facilities from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act, the cost limits shall include:

(1) The cost of acquiring such housing,

(2) The cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and

(3) the cost of the land on which the housing and related facilities are located. In the case of existing housing and related facilities which require no rehabilitation and are to be acquired from the Resolution Trust Corporation, 85 percent of the development cost limits identified in paragraphs (b) and (c) of this section shall be used to calculate the capital advance amount to be reserved.

(k) The Secretary shall use the development cost limits established under paragraphs (a) through (d) of this section adjusted by locality to calculate the fund reservation amount of the capital advance to be made available to individual Owners. Owners which incur actual development costs that are less than the amount of the initial fund reservation shall be entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage shall be increased to 75 percent for Owners which add energy efficiency features which

(1) Exceed the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act;

(2) Substantially reduce the life-cycle cost of the housing;

(3) Reduce gross rent requirements; and

(4) Enhance tenant comfort and convenience.

(l) Secretary approval. The Replacement Reserve Account established under paragraph (k) of this section may only be used with the approval of the Secretary for repairs, replacements and capital improvements to the project.

(m) Funds from other sources. An Owner shall be permitted voluntarily to provide funds from non-Federal sources for amenities and other features of appropriate design and construction suitable for supportive housing for persons with disabilities if the cost of such amenities is

(1) Not financed with the capital advance, and

(2) Is not taken into account in determining the amount of Federal assistance or of the tenant payment.

§ 890.250 Owner deposit (Minimum Capital Investment).

The Owner must deposit one-half of 1 percent (0.5%) of the HUD-approved capital advance not to exceed $10,000 in a special escrow account to assure the Owner's commitment to the housing. The Minimum Capital Investment will be placed in escrow at the initial closing of the capital advance and will be held by HUD or by a HUD-approved escrow agent. If construction starts within the initial 18 months of the fund reservation, HUD will waive one-half of the Minimum Capital Investment, which would be required under the aforementioned formula, at the time of initial closing. If final closing occurs within six months after construction completion, HUD will approve the return of all remaining funds not used to cover operating deficits during the first three years of operation. If final closing does not occur within six months after project completion, unless extended by the Field Office for up to two months due to justifiable delay, the balance remaining at the end of three years will not be returned and shall be deposited in the Replacement Reserve Account.

§ 890.255 Operating cost standards.

HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for persons with disabilities in each Field Office, and shall adjust the standard annually based on appropriate indices of increases in housing costs such as the Consumer Price Index. The operating cost standards shall be developed for group homes based on the number of residents, and for independent living facilities based on the number of units. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the Field Office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project under § 890.305(a)(3). The Owner must submit estimates based on project design, maintenance and services provided at the time of issuance of conditional and firm commitment stages of processing.

§ 890.260 Other Federal requirements.

(a) *Nondiscrimination and equal opportunity.* Participation in this program requires compliance with:

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19), and its implementing regulations at 24 CFR part 100; Executive Order No. 11063 (Equal Opportunity in Housing) and

implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1.;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and the implementing regulations at 24 CFR part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women-Owned Business Enterprises);

(6) The affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and

(7) The fair housing advertising guidelines and poster regulations, 24 CFR parts 109 and 110.

(b) Environmental. The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, and the Coastal Barrier Resources Act (16 U.S.C. 3601) apply to this program. For the purposes of Executive Order No. 11988, Floodplain Management, all applications for intermediate care facilities for persons with developmental disabilities (see § 890.105) shall be treated as critical actions requiring consideration of the 500-year floodplain.

(c) Flood insurance. The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) applies to this program.

(d) Labor standards. For projects that are designed for dwelling use by 12 or more individual persons with disabilities (other than projects acquired without rehabilitation), participation in this program is subject to the following requirements:

(1) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a–276a–5), must be paid to all laborers and mechanics employed in the construction (including rehabilitation) of the project. HUD may waive the Davis-Bacon requirements in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purposes of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction.

(2) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), except with respect to volunteers for whom the Davis-Bacon requirements have been waived under subparagraph (d)(1)(i) of this section.

(3) Sponsors, Owners, contractors and subcontractors must comply with all related rules, regulations, and requirements.

(e) *Displacement, relocation, and real property acquisition*—(1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (e)(6) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the comparable replacement dwellings are located in areas of minority concentration, minority persons also must be given, if possible, referrals to suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(3) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(4) *Appeals.* A person who disagrees with the Sponsor's/Owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponsor/Owner. A lower-income person who is dissatisfied with the Sponsor's/Owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(5) *Responsibility of Sponsor/Owner.* The Sponsor/Owner shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this paragraph. The Sponsor/Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(6) *Definition of a displaced person.* (i) For purposes of this paragraph, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(A) After notice by the Sponsor/Owner to move permanently from the property if the move occurs on or after (A) the date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or (B) the date that the Sponsor obtains control of an approvable site, if such control is obtained after the submission of an application to HUD;

(B) Before the date described in (e)(6)(i)(A) of this paragraph, if the Sponsor/Owner or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project;

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the Agreement between the Sponsor/Owner and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under

reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent and estimated average monthly utility costs before the Agreement; or the total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(*3*) The tenant is required to relocate temporarily, does not return to the building/complex, and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (e)(6)(i) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(B) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation or a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(iii) The Sponsor/Owner may request, at any time, a HUD determination of whether a displacement is or would be covered by this paragraph.

(f) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraph (f)(2) of this section) apply to the dwellings (except zero-bedroom dwelling units) in housing assisted under this part which

(i) Was constructed or substantially rehabilitated before 1978 and

(ii) In which any child under seven years of age resides or is expected to reside.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to covered structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in subpart C of 24 CFR part 35.

(ii) The following definitions apply to this paragraph (f):

Applicable surface means all intact and nonintact painted interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 mg/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint surface means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm. 2.

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the Sponsor must inspect the structure for defective paint surfaces before it submits site information under § 890.400. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the Owner is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the Owner must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analysis (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) Where abatement will result from rehabilitation activities planned (*i.e.*, where all applicable surfaces will be replaced, covered or otherwise abated as described in this part), these surfaces need not be tested.

(vi) In lieu of the procedures set forth in the preceding clause, the Owner may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vii) The Owner must take appropriate action to protect tenants from hazards associated with abatement procedures.

(viii) The Owner must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the Owner must keep the test results, and, if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this paragraph (f) of this section, these surfaces do not have to be tested or treated at any subsequent time.

(g) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR part 52 are applicable to this program.

§ 890.265 Application contents.

(a) *Application.* Each application shall include all of the information, materials,

forms, and exhibits listed in paragraph (b) of this section. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 811 capital advance funds on the information provided in the application.

(b) Application contents. Each applicant (Sponsor) shall include:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by bedroom type and number of residents (if independent living facility) or the number of bedrooms and number of residents to be housed in each group home);

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and type of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation, or acquisition (group homes and RTC properties).

(c) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private nonprofit organization, including the following:

(i) Articles of incorporation, constitution, or other organizational documents;

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or the Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) Will form an Owner (as defined in § 890.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 890.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and any statements of support for the project by members of the community in which the project is to be located and the state and local organizations familiar with the needs of disabled individuals proposed to be housed.

(5) Evidence of previous participation in HUD programs, by the Sponsor, its officers or directors. If none, indicate "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) Any other rental housing projects, medical and/or other facilities sponsored, owned or operated by the Sponsor, including a description of experience in providing housing, medical and/or other facilities to persons with disabilities and/or to families; and

(ii) The Sponsor's experience in providing housing, medical or other facilities and/or services to minority persons or families and in contracting with minority and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience in serving persons with disabilities and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and ensure the provision of appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitation under this part or part 889. Indicate by Field Office, the proposed location by city and state, the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and associated development or operating costs related to items not covered by the capital advances under § 890.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417, and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) A list of current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status, (if finally closed, indicate month and year), and financial requirements for closing.

(13) A narrative description of the proposed housing, including:

(i) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding);

(A) If the Sponsor has control of the site, it must submit the following information:

(*1*) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site, or has a copy of the contract of sale for the site, a deed, or

long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notification of Section 811 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and whether there are any restrictive covenants.

(**Note:** A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the Section 811 project or from any other development team member.)

(*2*) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated;

(*3*) Photographs of the site;

(*4*) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*);

(*5*) A statement that:

(*i*) Identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later);

(*ii*) Indicates the estimated cost of relocation payments and other services, and

(*iii*) Identifies the staff organization that will carry out the relocation activities.

(**Note:** If any of the relocation costs will be funded from sources other than the section 811 capital advance, the Sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, Sponsors are encouraged to utilize sites which involve minimal or no relocation costs.)

(*6*) An indication whether the Sponsor is willing to seek a different site if the preferred site is unapprovable, and if so, a reasonable assurance that site control will be obtained within 6 months of fund reservation notification.

(B) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(*1*) A description of the location of the site, neighborhood/community characteristics (to include racial and ethnic data) and amenities, and adjacent housing and/or facilities;

(*2*) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site, if approved for funding;

(*3*) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning; and

(*4*) A status of the sale of the site.

(*5*) An indication as to whether the site would involve relocation.

(ii) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(iii) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features.

(iv) A written description of the design of the proposed housing including any special design features and community space necessary to accommodate the physical needs of the proposed residents and the provision of supportive services. Included with the written description must also be a schematic drawing of each floor of the project noting the location of any special design features as well as a typical bedroom in a group home or a typical unit in an independent living facility with approximate dimensions, and community space for the provision of supportive services.

(v) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under title XIX of the Social Security Act) that serve persons with developmental disabilities, evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for a tenant payment and for the costs of the intermediate care, and such other information as HUD may require to determine the feasibility of the intermediate care facility.

(14) A narrative description of the anticipated occupancy. The Sponsor must limit occupancy of the proposed project to one or more of the following categories: Persons with chronic mental illness, developmental disabilities, or physical disabilities. The Sponsor may, with the approval of the Secretary, restrict occupancy of a project to persons with disabilities who have similar disabilities and who require a similar set of supportive services unique to their disabilities. The Sponsor must demonstrate a capacity to serve the proposed occupancy group(s).

(15) A supportive services plan that includes:

(i) A detailed description of whether the housing is intended to serve the physically disabled, developmentally disabled, or chronically mentally ill. Include how and from where persons will be referred and admitted to the project.

(ii) A detailed description of the needs of persons with disabilities that the housing is expected to serve.

(iii) A *detailed description of the supportive services* proposed to be provided to the anticipated occupancy, including:

(A) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

(B) The manner in which such services will be provided (i.e., how, when and how often, where (on/off-site), including

assurances that the proposed residents will receive supportive services based on their individual needs.

(C) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(iv) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(v) A letter of intent from each agency that will provide the supportive services (if other than the Sponsor), indicating the source and extent of commitment to provide funding for the supportive services.

(vi) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category.

(16) Evidence demonstrating that there is effective demand for the proposed housing in the area to be served by the project and demonstrating that this demand is likely to continue throughout the life of the project.

(17) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(18) For applications submitted after October 31, 1991, a certification from the public official responsible for submitting a housing strategy for the jurisdiction to be served in accordance with section 105 of the NAH Act that the proposed activities are consistent with the approved Comprehensive Housing Affordability Strategy (CHAS) of the state or unit of general local government within which the eligible property is located.

(19) A certification from the appropriate state or local agency it has reviewed the supportive services plan in the Sponsor's application and that the provision of services identified in the application is well designed to serve the special needs of persons with disabilities to be served by the proposed project(s).

(Note: The certification will not be included in the Sponsor's application submission to the Field Office. The state or local agency shall complete the certification found in the Sponsor's submission to the agency and forward it to the Field Office within 30 days of the application deadline date.)

(20) A certification of the Sponsor(s) that the appropriate state agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the section 811 Program is covered under the state review process and, if applicable, the date the application was submitted to the state.

(21) A certification that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(22) A certification by the Sponsor(s) that the section 811 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(23) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(24) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(25) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24, and 24 CFR 890.260(e).

§ 890.270 Disclosure and verification of Social Security and Employer Identification Numbers by Owners.

To be eligible to become an Owner of housing assisted under this part, the Owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

Subpart C—Selection of Applications and Duration of Fund Reservation

§ 890.300 Review of application for fund reservation.

(a) Preliminary Evaluation. To be eligible for selection, an application must be received by the Field Office within the time period specified in the Invitation and must be complete. In order to determine whether an application is complete, filed by an eligible applicant, responsive to the Invitation and acceptable for technical processing, the Field Office shall perform an initial threshold review upon receipt of the application. To make the above determination, the Field Office shall use the following initial threshold criteria at preliminary evaluation:

(1) The application was received by HUD at the appropriate address by the date specified in the NOFA and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(2) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of notification of deficiency letter;

(3) Sponsor, proposed facilities and proposed occupants are eligible under section 811;

(4) Sponsor has experience in the development and/or operation of housing and/or the provision of supportive services to persons with disabilities, families or minority groups;

(5) Application included a supportive services plan meeting the requirements of § 890.265(c)(15);

(6) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(7) Application contains evidence of control of a site or the appropriate identification of a site;

(8) Sponsor is in compliance with civil rights laws and regulations;

(9) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority and disabled concentration considerations, and is not in a floodway;

(10) There is sufficient market demand for the number and type of units proposed based on preliminary review; and

(11) Application was responsive to the Field Office Invitation.

(12) Action on applications found to be incomplete. If an application is determined to be incomplete, the Sponsor shall be advised in writing of any deficiencies or any inconsistencies. The missing information is to be submitted generally within 14 calendar days from the date of HUD's written notification. It is not additional time to complete or amend the application to overcome any defects in the original submission. An application with two or more complete exhibits missing is to be rejected, except that an application missing certifications will not be

rejected, provided they are executed before the application submission deadline and submitted within the 14-day period.

(b) Technical processing. When an application is determined to be complete and responsive to the Invitation, technical processing, consisting of the following, shall be accomplished:

(1) The Field Office will evaluate the application to determine its eligibility and acceptability based on the selection criteria in paragraph (c) of this section.

(2) If, in its evaluation of all pertinent factors, the Field Office determines that the application is rejected on any technical grounds, it shall notify the Sponsor in writing that it has generally 14 calendar days from the date of the notification letter to appeal the technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

(3)(i) For applications that contain satisfactory evidence of site control, the Field Office shall, before project selection, complete an environmental review of the sites in compliance with the National Environmental Policy Act of 1969 and the related authorities in 24 CFR part 50.

(ii) No site shall be approved if it is located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless

(A)(*1*) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations thereunder (44 CFR parts 59 through 79), or

(*2*) Less than a year has passed since FEMA notification regarding such hazards, and

(B) Flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(iii) Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve properties located in the Coastal Barrier Resources System.

(iv) If a site is not approved, the application will not be rejected, provided the Sponsor indicated that it is willing to develop the proposed project on a different site.

(4) Based on the factors set forth in paragraph (b) of this section, the field office will determine the applications which, in its judgment, are approvable. Selections will be made in accordance with paragraph (d) of this section.

(c) Selection criteria. The selection criteria for assistance include:

(1) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis:

(i) The scope, extent and quality of the Sponsor's experience in providing housing and/or supportive services to the proposed disabled population;

(ii) The scope, extent and quality of the Sponsor's experience in providing housing and/or supportive services to minority persons or families and opportunities for minority and women-owned business enterprises participation; and

(iii) The extent of local community support for the Sponsor and its activities, including experience in providing housing and/or supportive services in the area where the project is to be located and demonstrated ability of Sponsor to enlist volunteers and local funds for its efforts;

(2) The Sponsor's financial capacity:

(i) The financial history and the current financial outlook of the Sponsor;

(ii) The ability and willingness of the Sponsor to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment; and

(iii) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor.

(Note: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to Invitations issued under this part or part 889.)

(3) The need for supportive housing for persons with disabilities in the area to be served;

(4) The design of the project:

(i) The extent to which the proposed design of the housing will meet the special needs of persons with disabilities;

(ii) The extent to which the proposed design of the housing will accommodate the provision of supportive services (that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of disabled persons the housing is intended to serve); and

(iii) The extent to which the proposed size and unit mix (if independent living facility) of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion;

(5) The provision of supportive services:

(i) The extent to which the Sponsor has demonstrated that necessary supportive services will be provided on a consistent, long-term basis;

(ii) The appropriateness of the supportive services to the needs of the proposed disabled population; and

(iii) The quality of the service implementation plan;

(6) The extent to which the Sponsor has control of the site of the proposed housing:

(i) Applications with evidence of site control:

(A) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, job opportunities and other necessary services to the intended occupants;

(B) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons; and

(C) Freedom of the site from adverse environmental conditions and overconcentration of disabled people; and

(D) Reasonableness of the site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets; or

(ii) Applications with identification of site:

(A) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, job opportunities and other necessary services to the intended occupants, as well as freedom from overconcentration of disabled persons;

(B) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons; and

(C) The likelihood that site control will be obtained within six months of fund reservation, if approved.

(d) The Field Office shall rate each application on the basis of its assessment of the Sponsor's application using the selection criteria. The Field Office shall also calculate the capital advance and the PRAC amounts to be reserved for each project. The Regional Office shall identify for selection the highest ranking applications in descending order which most reasonably approximate the estimated maximum number of units which can be funded within two categories. Category A shall consist of all approvable applications that contain evidence of control of an approvable site(s). Category B shall consist of all other approvable applications in which a site(s) has been identified but is not under control. An approvable application containing evidence of site control in which the site is found not approvable shall be ranked in Category B, provided the Sponsor has indicated in the application a willingness to seek a different site.

(e) Selection. (1) Based on the ranking under paragraphs (c) and (d) of this section, HUD first shall select applications in the descending order of funding priority from Category A that most closely approximate the capital advance authority allocated to the Region.

(2) If capital advance authority remains after selecting all approvable aplications from Category A, HUD shall then select applications in the descending order of funding priority from Category B that most closely approximate the capital advance authority remaining for each Field Office.

(3) If, after completing paragraph (e)(1) of this section and, if necessary, paragraph (e)(2) of this section, the amount of capital advance authority allocated to a Field Office exceeds the amount necessary to fund all approvable applications in that area, the Department shall transfer the unused capital advance authority from the area to another area or areas in which there is insufficient capital advance authority for all approvable applications.

(4) Following the selection of applications, the Field Office will notify the Sponsors of applications that are not approvable after technical review processing under paragraph (b) of this section, and the Sponsors of applications that are not selected for funding under this paragraph (e). The notification will be in writing and will explain the reasons for HUD's action.

§ 890.305 Approval of applications.

(a) *Notification of fund reservation.* A Sponsor whose application is approved will be issued a notification of section 811 fund reservation in a format prescribed by HUD. The notification of fund reservation will specify:

(1) The number and mix of units for an independent living facility or the number of residents approved for a group home, the location of the site (where the Sponsor provided satisfactory evidence of control of an approved site, or satisfactory assurances that control can be obtained within six months of fund reservation) and the project occupancy requirements approved by HUD;

(2) The amount of fund reservation based on the development cost limit computed under § 890.245;

(3) The amount of annual project rental assistance contract and budget authority reserved for the project equal to the operating cost standard developed under § 890.255;

(4) The deadline for the Sponsor to sign and return a copy of the notification indicating it will file a request for conditional commitment to HUD with an indication of its acceptance;

(5) If the Sponsor did not have control of an approvable site under § 890.400 with the application or if the Sponsor submitted the site information but HUD determined that the site was not approvable, the deadline for the Sponsor to submit such information and the reasons for the rejection of any proposed site;

(6) The deadline for the Owner to submit a request for capital advance and a request for determination of Owner eligibility under subpart D of part 890 (reserved); and

(7) Other guidance to Sponsors and Owners (including any additional evidence required under subpart D of part 890 (reserved)).

(b) *Withdrawal of approval.* If the Sponsor does not accept of the notification (indicating it will file a request for conditional commitment) by the date specified in the notice of fund reservation, the Field Office may notify the Sponsor that approval of its application is withdrawn.

(c) *Use of capital advance funds.* No part of the funds reserved may be transferred by the Sponsor, except to the Owner, caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a conditional commitment.

(d) *Amendments.* Subject to the availability of funds, HUD may amend the amount of a fund reservation approved under paragraph (a)(1) of this section at any time before the final closing.

§ 890.310 Duration of fund reservation.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance under § 890.305.

(1) Subject to the approval of the Assistant Secretary, immediately following the expiration of the six month period after the notification of fund reservation, the Field Office shall issue a notice of intent to cancel the fund reservation to each Owner that does not yet have control of an approvable site. The notice shall indicate that the fund reservation will be cancelled upon its one year anniversary unless the Owner submits evidence of control of an approvable site within ninety (90) days of receipt of the notification.

(2) Subject to the approval of the Assistant Secretary, the Field Office may, at any time, issue a notice of intent to cancel the fund reservation if the Field Office determines that the Owner is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition.

(3) Subject to the approval of the Assistant Secretary, the Field Office shall issue a notice of intent to cancel the fund reservation if the construction, rehabilitation, or acquisition with or without rehabilitation of a project is not begun within 18 months after the notice of fund reservation under § 890.260(a) is issued or, if applicable, within an extension of the 18-month period granted under paragraph (a)(4) of this section.

(4) The Field Office may extend the period specified in paragraph (a)(3) of this section up to 24 months after the notification of section 811 fund reservation is issued, if HUD determines that the Owner is making satisfactory progress toward the start of construction, rehabilitation, or acquisition. The Regional Office may grant additional extensions of up to 36 months after the notification of fund reservation is issued, if—

(i) The delay has been for reasons beyond the Owner's control;

(ii) The Owner has done everything within its power to resolve the problems causing the delay;

(iii) All major problems have been resolved, or there is good reason to expect prompt resolution; and

(iv) There is good reason to expect the start of construction, rehabilitation, or acquisition with or without rehabilitation to begin within the extension period.

(b) *Notification procedures.* (1) If HUD determines that a fund reservation must be cancelled under paragraph (a) of this section (except paragraph (a)(1) of this section), the Field Office shall mail a notice of cancellation to the Owner by certified mail, return receipt requested. The notification of fund reservation cancellation must:

(i) Describe the reasons for the cancellation of the fund authority; and

(ii) Advise the Owner that it may file an appeal of the cancellation with the Field Office within 30 days of the receipt of the cancellation notice, and that the failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

(2) If the Owner fails to file an appeal of the fund reservation cancellation within 30 days of the date of the receipt of the cancellation notice, the Field Office shall cancel the fund reservation and provide a written notice of the cancellation to the Owner.

(3) If the Owner files an appeal within 30 days of the receipt of the cancellation notice, HUD Headquarters will review the appeal and will issue a decision on the appeal within 45 days of the receipt of the appeal. HUD will approve the

appeal if the Owner demonstrates that it is making satisfactory progress toward the start of construction, rehabilitation, or acquisition with or without rehabilitation.

(i) If HUD approves the appeal, it shall provide a written notification of the approval to the Owner. The notification shall indicate the duration of the extended fund reservation.

(ii) If HUD disapproves the appeal, it shall notify the Owner in writing of the determination, and cancel the fund reservation.

(4) At the end of the ninety (90) day period specified in paragraph (a)(1) of this section, the Field Office shall mail a notice of fund reservation cancellation to the Owner by certified mail, return receipt requested, who either did not submit evidence of site control, or submitted evidence of site control but the evidence, site, or both, were unacceptable, in response to the notification of intent to cancel the fund reservation. The notice of fund reservation cancellation must:

(i) Indicate that the fund reservation is being cancelled because the Owner does not have control of an approvable site; and

(ii) Advise the Owner that it may file an appeal of the cancellation in the form of satisfactory evidence of control of an approvable site with the Field Office within 30 days of the receipt of the cancellation notice, and that failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period. If the Owner fails to file an appeal of the fund reservation cancellation within 30 days of the receipt of the cancellation notice, the Field Office shall cancel the fund reservation and provide a written notice of cancellation to the Owner. If the Owner files an appeal, in the form of evidence of site control, within 30 days of the receipt of the cancellation notice, HUD Headquarters will review the Field Office's recommendation after the Field Office has reviewed the evidence and evaluated the site, and issue a decision within 45 days of the receipt of the appeal.

(5) If HUD determines that the Owner has satisfactory evidence of an approval site, it shall provide a written notification of such to the Owner.

(6) If HUD determines that the Owner does not have satisfactory evidence of site control or the site is rejected, it shall provide a written notification of such to the Owner, and cancel the fund reservation.

Subpart D—Capital Advances

§ 890.400 Repayment of capital advances.

(a) Interest prohibition and repayment. A capital advance provided under this part shall bear no interest and its repayment shall not be required so long as the housing remains available for very-low-income persons with disabilities in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a declaration of trust, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any section 811 project is prohibited, unless the Assistant Secretary gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer is a part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income persons on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

Subpart E—Project Rental Assistance Contract [Reserved]

Subpart F—Project Management [Reserved]

Subpart G—Technical Assistance

§ 890.700 Technical assistance.

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under this part.

Dated: May 31, 1991.

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-13637 Filed 6-11-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3232; FR-2987-N-01]

Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for FY91.

SUMMARY: This NOFA announces HUD's funding for supportive housing for persons with disabilities. In the body of this document is information concerning the following: (a) the purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria and (b) application processing, including how to apply and how selections will be made. A checklist of steps and exhibits involved in the application process will be included in the application package which can be obtained from the appropriate Field Office identified in Appendix A.

DATES: The deadline date for receipt of applications in response to this NOFA is August 12, 1991.

ADDRESSES: Applications must be delivered to the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers where available) are attached as Appendix A to this NOFA. HUD will date-stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this NOFA are 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, *Findings and Certifications.* 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: HUD Desk Officer, room 3001, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

Section 811 of the National Affordable Housing Act (the NAH Act) authorizes a new supportive housing program for persons with disabilities and replaces assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAH Act, to authorize supportive housing for the elderly). The purpose of section 811 is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. The Secretary is authorized to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 890 published elsewhere in today's **Federal Register.** This assistance may be used to finance the construction, rehabilitation or acquisition (group homes only), including acquisition of property from the Resolution Trust Corporation (RTC) (group homes and independent living facilities), to be used as supportive housing for persons with disabilities in accordance with the Interim Rule.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, (Pub. L. 101-507, approved November 5, 1990 (Fiscal Year 1991 Appropriations Act)) provides $106,709,000 for capital advances under section 811 (including 500 units for persons disabled as a result of infection with the human acquired immunodeficiency virus (HIV)) and $104,000,000 for project rental assistance (including assistance for 500 units of housing for persons disabled as a result of infection with the HIV). A NOFA for the 500 units of housing for persons disabled as a result of infection within the HIV will be published later. Of the amounts available up to $5,000,000 shall be available for contracts for technical assistance in accordance with section 811(j)(1). The capital advance allocation amounts set forth in section B. below are those available after amounts have been set aside for projects for persons disabled as a result of infection with the HIV, amendments to prior year fund reservations and for technical assistance.

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). The Supportive Housing for Persons with Disabilities interim rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest, is a new statutory requirement for a certification by the appropriate state or local agency

that the provisions of services identified in the application is well designed to serve the needs of persons with disabilities. In order to fulfill this requirement, Sponsors must submit one copy of their application to the appropriate state or local agency identified by the Field Office in the application package simultaneously with their submission of their application to the appropriate Field Office. Also included with the application package will be a certification form that the Sponsor shall transmit to the state or local agency, along with its application, for the state or local agency to indicate that it has reviewed the supportive services plan and whether or not the provision of services is well designed to meet the needs of the proposed disabled population. Once the state or local agency completes its review of the supportive services plan, it must complete the certification form and forward it to Field Office within 30 days of the Section 811 application deadline date. Unlike the Section 202 Program of Housing for Handicapped People where the appropriate state agency's review of the service plan description was optional, in the Section 811 program, the state or local agency's certification is required for approval of the Sponsor's application. Applications which do not contain such a certification will not be funded.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for persons with disabilities, less amounts set aside for projects for persons disabled as a result of infection with the HIV, for amendments of fund reservations made in prior years and for technical assistance.

The allocation formula for section 811 funds consists of the following two data elements:

1. A measure of the number of persons identified as having a public transportation disability; and

2. A measure of the number of persons identified as having a work disability.

FISCAL YEAR 1991 ALLOCATION FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

Region	Capital advance	Units
I	$4,417,000	64
II	9,060,000	125
III	8,466,000	147
IV	15,409,000	334
V	12,506,000	227
VI	6,533,000	147
VII	2,739,000	57
VIII	1,739,000	32
IX	10,511,000	163
X	1,909,000	34
National Total	$73,030,000	1,330

C. Eligibility

The only eligible applicants under this program are private, nonprofit organizations. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. A single Sponsor shall not request more units in a given Region (excluding requests for the 500 units set-aside for persons disabled as a result of infection with the HIV, which shall be the subject of a separate NOFA) than advertised for that Region in the Invitation.

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 811 fund reservations for housing for persons with disabilities that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing:

(a) Application was received by HUD at the appropriate address by August 12, 1991, and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification of deficiency letter;

(c) Sponsor, proposed facilities and proposed occupants are eligible under section 811;

(d) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the disabled, families or minority groups;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Application contains evidence of control of a site or the appropriate identification of a site;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(1) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(2) There are no outstanding findings of non-compliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of non-compliance;

(3) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57);

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority and disabled concentration considerations, and is not in a floodway or Coastal High Hazard Area;

(i) There is sufficient market demand for the number and type of units proposed based on preliminary review;

(j) Application included a supportive services plan meeting the requirements of § 890.265(c)(15); and

(k) Application was responsive to the Field Office Invitation.

2. Selection Criteria

Applications for section 811 fund reservations that successfully pass preliminary evaluation and technical processing will be rated using the following selection criteria:

(a) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis (20 points);

(1) The scope, extent and quality of the Sponsor's experience in providing housing or supportive services to the proposed disabled population (10 points);

(2) The scope, extent and quality of the Sponsor's experience in providing housing and/or supportive services to minority persons or families and opportunities for minority and women-owned business enterprises participation (5 points); and

(3) The extent of local community support for the Sponsor and its activities, including experience in providing housing and/or supportive services in the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds for its efforts (5 points);

(b) The Sponsor's financial capacity (25 points):

(1) The Sponsor's financial history and its current financial outlook (5 points);

(2) The Sponsor's ability and willingness to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment (10 points); and

(3) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor.

Note: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to Invitations under this NOFA, the NOFA for Supportive Housing for the Elderly (published elsewhere in today's Federal Register) or other Invitations under part 889 or 890 (10 points).

(c) The need for supportive housing for persons with disabilities in the area to be served (10 points).

(d) The design of the project (10 points):

(1) The extent to which the proposed design of the housing will meet the special needs of persons with disabilities (4 points);

(2) The extent to which the proposed design of the housing will accommodate the provision of supportive services (that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of disabled persons the housing is intended to serve (3 points); and

(3) The extent to which the proposed size and unit mix (if independent living facility) of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (3 points);

(e) The provision of supportive services (20 points):

(1) The extent to which the Sponsor has demonstrated that necessary supportive services will be provided on a consistent, long-term basis (10 points);

(2) The appropriateness of the supportive services to the needs of the proposed disabled population (5 points); and

(3) The quality of the service implementation plan (5 points);

(f) The extent to which the Sponsor has control of the site of the proposed housing (15 points):

(1) Applications with evidence of site control:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, job opportunities and other necessary services to the intended occupants (4 points)

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority and disabled persons/families (4 points);

(iii) Freedom of the site from adverse environmental conditions and overconcentration of disabled people (4 points); and

(iv) Reasonableness of the site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets (3 points); or

(2) Applications with identification of site:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities and other necessary services to the intended occupants as well as freedom of overconcentration of disabled persons (5 points);

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons/families (5 points); and

(iii) The likelihood that site control will be obtained within six months of fund reservation, if approved (5 points).

II. Application Process

All applications for section 811 fund reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office and must contain all exhibits required by this NOFA.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for disabled households.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 890.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on August 12, 1991, unless that time is extended by a Notice published in the Federal Register. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Organizations interested in applying for a section 811 fund reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the section 811 Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 811 eligible Owners to cover certain start-up expenses. Section 106(b) applications should be submitted simultaneously with the section 811 application. HUD will consider section 106(b) applications with the section 811 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, application packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, application packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost requirements and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, housing costs, and states, positions on funding supportive services to group home residents will be addressed.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in paragraph 2 of this section and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 811 capital advance funds on the information provided in the application.

In preparing applications, applicants will be able to utilize information and

exhibits previously prepared for prior section 202 applications or for applications for other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include among others those on previous participation in the section 202 program; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

1. Application Contents

(a) Each applicant (Sponsor) shall include on a Form HUD–92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by bedroom type (efficiency (415 sq. ft.), one-bedroom (540 sq. ft.), two-bedroom (800 sq. ft.), three-bedroom (1050 sq. ft.), four-bedroom (1150 sq. ft.) or if five or more bedrooms are provided, increase unit sizes by up to 100 sq. ft. for each additional bedroom) and the number of residents (if independent living facility) or the number of bedrooms and number of residents to be housed in each group home;

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and type of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation, or acquisition (group homes and RTC properties)).

(b) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract (Form HUD 92531A–EH), and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private nonprofit organization, including the following:

(i) Articles of incorporation, constitution, or other organizational documents:

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) Will form an Owner (as defined in § 890.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 890.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and any statements of support for the project by members of the community in which the project is to be located and state and local organizations familiar with the needs of disabled individuals proposed to be housed.

(5) Evidence of previous participation in HUD programs, by the Sponsor, its officers or directors, on Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) Any other rental housing projects, medical and/or other facilities sponsored, owned or operated by the Sponsor, including a description of experience in providing housing, medical and/or other facilities to persons with disabilities and/or to families; and

(ii) The Sponsor's experience in providing housing, medical or other facilities and/or services to minority persons or families and in contracting with minority and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving disabled persons and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and ensure the provision of appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations under this NOFA, the NOFA for Supportive Housing for the Elderly (published elsewhere in today's **Federal Register**) or other Invitations under Part 889 or 890. Indicate by Field Office, the proposed location by city and state, the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD–92290) for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advance under § 890.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417, and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status, (if finally closed, indicate month and year), and financial requirements for closing.

(13) A narrative description of the proposed housing including:

(i) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding);

(A) If the Sponsor has control of the site, it must submit the following information:

(1) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notification of section 811 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and whether there are any restrictive covenants.

(Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 811 project or from any other development team member.)

(2) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated;

(3) Photographs of the site;

(4) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*);

(5) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

(Note: IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 811 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. DUE TO POTENTIALLY HIGH RELOCATION COSTS, SPONSORS ARE ENCOURAGED TO UTILIZE SITES WHICH INVOLVE MINIMAL OR NO RELOCATION COSTS.)

(6) An indication as to whether the Sponsor is willing to seek a different site if the preferred site is unapprovable, and if so, a reasonable assurance that site control will be obtained within 6 months of fund reservation.

(B) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(1) A description of the location of the site, neighborhood/community characteristics (to include racial and ethnic data) and amenities, and adjacent housing and/or facilities;

(2) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site, if approved for funding;

(3) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning; and

(4) A status of the sale of the site.

(5) An indication as to whether the site would involve relocation.

(ii) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(iii) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features.

(iv) A written description of the design of the proposed housing including any special design features and community space necessary to accommodate the physical needs of the proposed residents and the provision of supportive services. Included with the written description must also be a schematic drawing of each floor of the project noting the location of any special design features as well as a typical bedroom in a group home or a typical unit in an independent living facility with approximate dimensions, and community space for the provision of supportive services.

(v) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act that serve persons with developmental disabilities, the following must be submitted:

(a) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies;

(b) Written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Sponsor;

(c) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(d) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency and where the services are to be provided;

(e) Description of any special design features in the application that are not common to other section 811 group homes for the proposed population and

the Sponsor's rationale for including them; and,

(f) Statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the home activity program for at least six hours each weekday.

(14) A narrative description of the anticipated occupancy. The Sponsor must limit occupancy of the proposed project to one or more of the following categories: Persons with chronic mental illness, developmental disabilities, or physical disabilities. The Sponsor may, with the approval of the Secretary, restrict occupancy of a project to persons with disabilities who have similar disabilities and who require a similar set of supportive service unique to their disabilities. The Sponsor must demonstrate a capacity to serve the proposed occupancy group(s).

(15) A supportive services plan that includes:

(i) A detailed description of whether the housing is intended to serve the physically disabled, developmentally disabled, or chronically mentally ill. Include how and from where persons will be referred and admitted to the project.

(ii) A detailed description of the needs of persons with disabilities that the housing is expected to serve.

(iii) *A detailed description of the supportive services* proposed to be provided to the anticipated occupancy, including:

(A) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

(B) The manner in which such services will be provided (i.e., how, when and how often, where (on/off-site), including assurances that the proposed residents will receive supportive services based on their individual needs.

(C) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(iv) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(v) A letter of intent from each agency that will provide the supportive services (if other than the Sponsor), indicating the source and extent of commitment to provide funding for the supportive services.

(vi) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category.

(16) Evidence demonstrating that there is effective demand for the proposed housing in the area to be served by the project and demonstrating that this demand is likely to continue throughout the life of the project.

(17) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(18) A certification from the appropriate state or local agency that it has reviewed the supportive services plan in the Sponsor's application and that the provision of services identified in the application is well designed to serve the special needs of persons with disabilities to be served by the proposed project(s).

(**Note:** The certification will not be included in the Sponsor's application submission to the Field Office. The state or local agency shall complete the certification found in the Sponsor's submission to the agency and forward it to the Field Office within 30 days of the application deadline date.)

(19) A certification of the Sponsor(s) that the appropriate state agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 811 Program is covered under the state review process and, if applicable, the date the application was submitted to the State.

(20) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(21) A certification by the Sponsor(s) that the section 811 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(22) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(23) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(24) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24, and 24 CFR 890.260(e).

IV. Corrections to Deficient Applications

A. Preliminary Evaluation

During preliminary evaluation, Sponsors will be provided 14 calendar days from the date of HUD's written notification to cure technical deficiencies in their applications. However, it is not additional time to amend the application to overcome any defects in the original submission. Technical deficiencies are inadvertently omitted documents which have been executed prior to the application deadline date (such as certifications or articles of incorporation) or clarifications of previously submitted material and are not of such a nature as to improve the competitive position of the application.

Technical deficiencies do not include items which would be considered substantive defects in the original submission. For example, if a Board resolution is missing from the original submission, but it is submitted during the 14-day period, it must have been executed prior to the deadline date for receipt of applications. If it is not submitted during the 14-day period or it is submitted during this time but executed after the deadline date for receipt of applications, it is a substantive defect and the application will be rejected. Sponsors of applications that are missing two or more exhibits will not be afforded an opportunity to submit the missing exhibits and will receive written notification that their applications have been rejected. However, exhibits which are certifications are not counted as missing exhibits in this determination.

Applicants whose applications are found unacceptable during the preliminary evaluation process due to substantive defects and applications which fail to adequately respond to HUD's deficiency letter within the 14-day period, will be notified that their applications are not eligible for further processing, and are rejected.

B. Technical Processing

Applications which are found acceptable during the preliminary evaluation process, or an acceptable response to HUD's deficiency letter was received within the 14-day period, will undergo a more thorough analysis. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 for applications that submitted satisfactory evidence of site control. Examples of reasons for technical processing rejection include a lack of commitment to fund the necessary supportive services or, based on a review of the detailed financial information, the Sponsor(s)' lack of sufficient financial resources. The Secretary will not reject an application based on technical processing without giving notice of that rejection and the basis therefor to the applicant and affording the applicant an opportunity to respond. An applicant will be afforded 10 calendar days from the date of HUD's written notice to appeal a technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 890.300(c) (also above in I.D.2.). Applications which have a total score of 50 points or more will be eligible for selection and will be placed in rank order.

V. Additional Information

A. Project Size Limits

The following project size limits are applicable to supportive housing for persons with disabilities:

1. Group homes may house no more than eight (8) persons per home. On a case-by-case basis, however, HUD may approve a group home of up to 15 disabled people if the Sponsor can demonstrate the following:

(a) The increased number of people is necessary for the economic feasibility of the project;

(b) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(c) A project of the size proposed can be successfully integrated into the community; and

(d) A project of the size proposed is marketable in the community.

2. Independent living facilities may house no more than 24 disabled people, except for projects for the chronically mentally ill which may not exceed 20 such persons. On a case-by-case basis, HUD may approve an exception to the 24-person limit based upon the same criteria set forth in (1) above.

B. Sites

The National Affordable Housing Act requires Sponsors submitting applications for section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within 6 months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in § 890.265(c)(13)(i)(A). If it does not have site control, it must provide the information required in § 890.265(c)(13)(i)(B) as a reasonable assurance that site control will be obtained within 6 months of fund reservation notification. Sponsors that do not provide satisfactory evidence of site control or the proper identification of a site will be notified that their applications are rejected.

Sponsors may select a site different from the one(s) submitted in their original applications. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will compete against each other in Category A. Sponsors submitting proper identification of a site will compete against each other in Category B. HUD first shall select applications in the descending order of funding priority from Category A that most closely approximates the capital advance authority provided to the allocation area. If capital advance authority remains after selecting all approvable applications from Category A, HUD shall then select applications in the descending order of funding priority from Category B that most closely approximates the capital advance authority remaining in the allocation area.

Sponsors that submit evidence of site control where either the evidence or the site is not approvable will not have their applications rejected; their applications will compete in Category B, provided the application indicates their willingness to select another site and assurance that they will have site control within six months of fund reservation.

VI. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street Southwest, 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 does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons with disabilities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. HUD Reform Act

Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531) (the Reform Act), which requires the Secretary to certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of other assistance specified in section 102(b)(1) of the Reform Act, and which also requires the Secretary to adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as appropriate for any changes reported under section 102(c) of the Reform Act, would apply to section 811 capital advances. These requirements will become effective after the Department publishes a final rule to implement the Reform Act.

E. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 31, 1991.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

Hud Field Offices

Region I

Boston, Massachusetts Regional Office (Jurisdiction: Massachusetts)

John Mastropietro, Regional Administrator-Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, Massachusetts 02222–1092 (617) 565–5234, (TDD) (617) 565–5453

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William Hernandez, Jr., Manager, HUD—Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4523, (TDD) (203) 240–4522

Manchester, New Hampshire Office (Jurisdiction: New Hampshire)

James Barry, Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, (TDD) (603) 666–7518

Providence, Rhode Island Office (Jurisdiction: Rhode Island)

Casimir J. Kolaski, Jr., Manager, HUD—Providence Office, 330 John O. Pastore Federal Building, and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1745, (401) 528–5351, (TDD) (401) 528–5364

Region II

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Buffalo, New York Office (Jurisdiction: New York)

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Region IV

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Region VIII

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[FR Doc. 91–13638 Filed 6–11–91; 8:45 am]

BILLING CODE 4210–27–M

federal register

Wednesday
June 12, 1991

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Parts 750, 885, and 889

Supportive Housing for the Elderly; Interim Rule and Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 750, 885, and 889

[Docket No. R-91-1524; FR 2956-I-01]

RIN 2502-AF19

Supportive Housing for the Elderly

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends 24 CFR part 885 and provides for the continued applicability of part 885 to projects for which section 202 loan reservations were made in FY 1990 and prior years. This interim rule also adds Part 889 to establish the new Supportive Housing for the Elderly Program and to enable FY 1991 funding of supportive housing projects for the elderly under part 889. Requirements relating to capital advances, project rental assistance contracts, and management of supportive housing for the elderly projects selected in FY 1991 will be published in July 1991 in a proposed rule also under part 889. The Supportive Housing for the Elderly Program is authorized by section 801 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12701 *et seq.* (the NAH Act) and is to enable elderly persons to live with dignity and independence by expanding the supply of supportive housing that is designed to accommodate the special needs of elderly persons and provides a range of services that are tailored to the needs of elderly persons occupying such housing. This interim rule also adds new part 889 to list of programs covered by 24 CFR part 750 (disclosure and verification of social security numbers and employer identification numbers by applicants and participants).

DATES: *Effective Date:* July 12, 1991. *Comment due date:* August 12, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address. Hearing or speech impaired individuals may call the Rules Docket Clerk's TDD number (202) 708–3259.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708–2084. (The telephone numbers listed in this paragraph are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Director, Housing for the Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6116, Washington, DC 20410, telephone (202)708–2730. (This is not toll-free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. The Department provided for 21 days public comment on the information collection requirements. OMB approval of those information collections, following public comment, is anticipated well in advance of the due date of applications submitted in response to today's documents.

Public reporting burden for the collection of information requirements contained in this rule are 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, Findings and Certifications. 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: HUD Desk Officer, room 3001, Washington, DC 20530.

II. Background

A. Applicability of Part 885

Part 885 provides direct Federal loans under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing projects serving elderly or handicapped families and individuals. A loan (with up to a 40-year term) made under part 885 is used to finance the construction, or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals. The housing projects provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services. New part 889 has the same description of services based on section 202(g)(1). Examples of services not included in parts 885 or 889 are recreational or social activities directors and medical services.

Subpart B of part 885 applies to projects for elderly or handicapped families that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. Subpart C of part 885 applies to projects for nonelderly handicapped families receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959. Part 885 has been amended by this interim rule and will apply to projects for which section 202 loan reservations were made in FY 1990 and prior years. Projects for the elderly selected for funding in FY 1991 and subsequent years will be covered by new part 889 (also added by this interim rule.)

B. New Part 889—An Overview

New part 889 is authorized by section 202 of the Housing Act of 1959, as amended by section 801 of the NAH Act. Under part 889, assistance will be provided to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Such assistance will be provided as (1) capital advances and (2) project rental assistance contracts. Capital advances may be used to finance the construction, or rehabilitation of a structure or a portion of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly.

For supportive housing for the elderly, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991 (Pub. L. 101–507, approved November 5, 1990, Fiscal Year 1991 Appropriations Act), provides $550,115,000 for capital advances under section 202 of the Housing Act of 1959, (as amended by section 801 of the NAH Act) and $263,619,000 for project rental assistance. The NAH Act and the Fiscal Year 1991 Appropriations Act contain differing provisions for implementing the Supportive Housing for the Elderly Program. The NAH Act defers initiation of the Program until FY 1992, while the appropriation contemplates conversion to the new Program in FY 1991. In order to permit the funding of supportive housing for the elderly in FY 1991 and best effectuate the purposes of both the NAH Act and the appropriation, the Department has decided to publish this rule as interim. A companion Notice of Funding Availability (NOFA) is also published today elsewhere in this issue. The NOFA provides information regarding eligibility, submission requirements, available capital advance amounts, selection criteria and application processing (including how to apply and how selections will be made.). Remaining requirements of this program, which are not necessary for fund reservation (*e.g.*, capital advances, project rental assistance contracts and management requirements) will be the subject of a proposed rule (also under part 889) which will be published later this year.

1. Forms of Assistance

(a) *General/capital advances.* In lieu of direct loans and section 8 housing assistance payments, part 889 provides for capital advances and project rental assistance contracts. Capital advances bear no interest and their repayment is not required so long as the housing remains available for very low-income elderly persons for not less than 40 years. The capital advance fund reservation will be calculated in an amount not to exceed the development cost limits, adjusted by locality.

(1) *Development cost limits.* The Secretary will periodically establish development cost limits by market area for various types and sizes of supportive housing for the elderly by publishing a notice of the cost limits in the Federal Register. The development cost limits shall reflect:

(i) The cost of construction, rehabilitation of a structure or a portion of a structure, or acquisition from the RTC for supportive housing for the elderly that meets applicable State and local housing and building codes;

(ii) The cost of movables (*e.g.*, movable equipment) necessary to the basic operation of the housing, as determined by the Secretary;

(iii) The cost of special design features necessary to make the housing accessible to elderly persons;

(iv) The cost of special design features to make individual dwelling units meet the physical needs of elderly project residents;

(v) The cost of congregate space (hereinafter referred to as community space) (includes space for cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other out-patient health facilities, or other essential service facilities) necessary to accommodate the provision of supportive services to elderly project residents;

(vi) If the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; and

(vii) The cost of land, including site improvement. In establishing development cost limits for a given market area, the Secretary will use data that reflect currently prevailing costs of construction or rehabilitation, and land acquisition in the area.

(2) *RTC properties.* In the case of existing housing and related facilities to be acquired from the RTC under section 21A(c) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)), the cost limits shall include: (1) The cost of acquiring such housing, (2) the cost of rehabilitation, alteration, conversion, or improvement, and (3) the cost of land on which the housing and related facilities are located.

(3) *Annual adjustments.* The Secretary will adjust the cost limits not less than once annually to reflect changes in the general level of construction or rehabilitation costs.

(4) *Incentives for savings.* The Secretary shall use the development cost limits (adjusted by locality) to calculate the initial fund reservation amount of the capital advance to be made available to individual owners. Owners whose HUD-approved actual development costs are less than the initial fund reservation amount of the capital advance shall be entitled to retain 50 percent of the savings in their Replacement Reserve Account (referred to in section 202(h)(4)(A) as a special housing account). Such percentage shall be increased to 75 percent for owners which add energy efficiency features which: (i) Exceed the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; (ii) substantially reduce the life-cycle cost of the housing; (iii) reduce gross rent requirements; and (iv) enhance tenant comfort and convenience. The Replacement Reserve Account may only be used as approved by HUD for repairs or replacements in or capital improvements of the project.

(5) *Design flexibility.* The Secretary will, to the extent practicable, give owners the flexibility to design housing appropriate to their location and proposed resident population within broadly defined parameters.

(6) *Use of funds from other sources.* An owner may voluntarily provide funds from non-Federal sources for amenities and other features of appropriate design and construction suitable for supportive housing for the elderly if the cost of such amenities is: (1) Not financed with the capital advance, and (2) is not taken into account in determining the amount of Federal assistance or tenant payment (section 202(h)(6) refers to this as rent contributions of tenants). Any funds borrowed (e.g., for services or construction) from other sources generally would not be acceptable and in any case would require HUD approval. The Department plans to issue, in July 1991, a proposed rule under part 889 covering these additional requirements regarding capital advances.

(b) *Project rental assistance contracts.* Contracts for project rental assistance obligate the Secretary to make monthly payments to cover any part of the HUD-approved operating

costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income elderly persons that is not met from project income. The annual contract amount for any project shall not exceed the HUD-approved annual operating budget for all units so occupied and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the annual contract amount if the sum of the project income and the amount of assistance payments available are inadequate to provide for reasonable HUD-approved operating costs. The HUD-approved operating costs may include an allowance (not to exceed $15 per unit per month) for services limited to the frail elderly, that is, to persons determined to have limitations in at least three activities of daily living (ADLs). Other "at-risk" elderly residents may receive services supported by HUD-approved operating costs only if it can be demonstrated, on a case-by-case basis, that the receipt of these services is essential to prevent their premature institutionalization.

2. Tenant Payment

A very low-income person shall make a tenant payment for a dwelling unit assisted under Part 889, the highest of the following amounts, rounded to the nearest dollar: (1) 30 percent of the person's monthly adjusted income, (2) 10 percent of the person's monthly income, or (3) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated. If the person's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under (3) above shall be the amount resulting from one application of the percentage.

3. Term of Commitment

All units in housing assisted under Part 889 shall be made available for occupancy by very low-income elderly persons for not less than 40 years. The initial term of a contract entered into for project rental assistance shall be 240 months. The Secretary will, to the extent approved in appropriations acts, extend any expiring contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

4. Applications/Selection Criteria

(a) *Applications.* Funds made available under Part 889 will be allocated by the Secretary among approvable applications submitted by private nonprofit organizations or nonprofit consumer cooperatives (*i.e.*, the Sponsor(s)). The Sponsors whose applications are selected by HUD will form single purpose nonprofit corporation owners (*i.e.*, the Owner) which shall receive the section 202 assistance. A NOFA (discussed above under B) for Supportive Housing for the Elderly is also published today with this interim rule and appears elsewhere in this issue. Applications for assistance under part 889 should be submitted by the applicant (Sponsor) in the form described in the NOFA. The NOFA provides complete information regarding the eligibility, available amounts, application submission requirements, selection criteria, deadline date for receipt of applications, and application processing. A checklist of steps and exhibits involved in the application process appears in the application package.

(b) *Selection Criteria.* The Secretary is required by section 202(f) to establish selection criteria for assistance. These selection criteria include:

(1) The ability of the applicant to develop and operate the proposed housing;

(2) The need for supportive housing for the elderly in the area to be served;

(3) The extent to which the proposed size and unit mix of the housing will enable the applicant to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion;

(4) The extent to which the proposed design of the housing will meet the special physical needs of elderly persons;

(5) The extent to which the applicant has demonstrated that the supportive services will be provided on a consistent, long-term basis;

(6) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve; and

(7) Such other factors as the Secretary determines to be appropriate to ensure that funds made available under section 202 are used effectively. To this list of selection criteria, the Secretary has added sub-criteria to explain the statutory criteria and also additional criteria regarding the Sponsor's financial capacity, experience in housing and/or services for minorities and the desirability of the proposed location site (§ 889.300(d)).

5. Provision of Services

(a) *General.* The Secretary is to ensure that housing assisted under this part provides a range of services tailored to the needs of the category or categories of elderly persons (including frail elderly persons) occupying such housing. Such services may include (1) meal service adequate to meet nutritional need; (2) housekeeping aid; (3) personal assistance; (4) transportation services; (5) health-related services; and (6) such other services the Secretary deems essential for maintaining independent living. The Sponsor and Owner must assure that services provided are not available elsewhere, which could adequately serve the needs of the elderly occupying the housing. The Secretary may permit the provision of services to elderly persons and persons with disabilities who are not residents if the participation of such persons will not adversely affect the cost-effectiveness or operation of the program or add significantly to the need for assistance under section 202 of the Housing Act of 1959. One of the exhibits to the section 202 application is the supportive services plan (§ 889.270(c)(17)). The supportive services plan must include a description of all supportive services, if any, to be provided to the persons occupying the housing. The supportive services plan must also describe the manner in which such services will be provided to such persons (i.e., on or off-site), including whether a service coordinator will facilitate the adequate provision of such services, and the public or private sources of assistance that may reasonably be expected to fund or provide such services.

(b) *Local Coordination of Services.* The Secretary will ensure that owners have the managerial capacity to: (1) Assess on an ongoing basis the service needs of residents; (2) coordinate the provision of supportive services and tailor such services to the individual needs of residents; and (3) seek on a continuous basis new sources of assistance to ensure the long-term provision of supportive services. Such capacity will be determined by reviewing statements in the Sponsor's application and experience, and Field Office's experience with the Sponsor, if

any. Reasonable costs associated with the local coordination of services shall be an eligible cost in the contract for project rental assistance. Any cost associated with the employment of a service coordinator shall also be an eligible cost except where the project is receiving congregate housing services assistance under section 802 of the NAH Act.

6. Tenant Selection

(a) *General.* The Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are satisfactory to the Secretary as (1) consistent with the purpose of improving housing opportunities for very low-income elderly persons; and (2) reasonably related to program eligibility and a tenant applicant's ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected tenant applicant of the ground for any rejection. Tenant selection will be discussed in more detail in the proposed rule expected to be published in July 1991. If the Owner has existing tenant selection procedures which meet the above requirements, they may be used and updated as needed.

(b) *Information regarding availability of section 202 housing.* The Secretary will provide to the applicable Area Agency on the Aging or the State Agency on the Aging, as appropriate, information regarding the availability of housing assisted under section 202. Each such agency will be provided with a list of section 202 projects for the elderly in the applicable area, selected for funding annually.

7. Technical Assistance

The Department will conduct various technical assistance activities to the extent that funds are available for that fiscal year.

8. Miscellaneous Provisions

(a) *Owner deposit (minimum capital investment).* The Secretary requires an Owner to deposit one/half of one percent (0.5%) of the total HUD-approved capital advance amount not to exceed $25,000 in a special escrow account to assure the Owner's commitment to the housing. If construction starts within the initial 18 months of the final reservation, HUD will waive one-half of the Minimum Capital Investment which would be required under the aforementioned formula at the time of initial closing. If final closing occurs within six months after construction completion, HUD will approve the return of all remaining funds not used to cover operating deficits during the first three years of operation. If final closing does not occur within six months after project completion, unless extended by the Field Office for up to two months due to justifiable delay, the balance remaining at the end of three years will not be returned and shall be deposited in the Replacement Reserve Account.

(b) *Civil rights compliance.* Each Owner shall certify, to the satisfaction of the Secretary, that assistance made available under this section will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act and other Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(c) *Notice of cancellation and appeal.* The Secretary will notify an Owner not less than 30 days prior to cancelling any reservation of assistance provided under this part. During the 30-day period following the receipt of the notice, an Owner may appeal the proposed cancellation of the reservation. Such appeal, including review by HUD, shall be completed not later than 45 days after the appeal is filed.

(d) *Labor standards.* Any contract for the construction (including rehabilitation) of affordable housing with 12 or more units assisted with funds covered by part 889, shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, shall be paid to all laborers and mechanics employed in the development of affordable housing involved. The overtime provisions of the Contract Work Hours and Safety Standards Act apply to those contracts. Davis-Bacon prevailing wages do not apply to volunteers if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction or rehabilitation work.

(e) *OMB Circular A–110.* The Department requests comments regarding the use of OMB Circular No. A–110, entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations—Uniform Administrative Requirements" for this program. Grants (but not loans) to nonprofit organizations are subject to A–110. Capital advances provided under the Supportive Housing for the Elderly Program have features of both loans and grants. For example, the capital advance resembles a loan because it is subject to repayment, unless the Owner makes all units in the project available to very low-income elderly persons for the full 40-year period. Previously, the section 202 Program provided direct loans and was not subject to A–110. Section 801 of the NAH Act and its legislative history do not give any guidance on the incidental effects (e.g., applicability to A–110) of the change in assistance to capital advances. If A–110 applied to this program, the current development team approach to construction/rehabilitation would be replaced with competitive procurement. After considering public comments, the Department intends to resolve this issue in either the final rule for this program or as a part of the common rule for A–110 (which is currently being prepared by the Office of Management and Budget).

(f) *Uniform Relocation Act.* Section 889.265(e) (Displacement, relocation and real property acquisition) contains policies necessary to conform part 889 to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and the government-wide implementing regulations at 49 CFR part 24.

Effective April 2, 1989, the URA was amended to, among other things, expand coverage. Under the current rules (see HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition), all persons (families, individuals, businesses, nonprofit organizations and farms) displaced on or after April 2, 1989 as a direct result of rehabilitation, demolition or acquisition (public or privately undertaken) for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.

The URA and the regulations at 49 CFR part 24, however, do not directly create eligibility for relocation assistance (as a "displaced person") for a tenant-occupant who is permitted to remain in the property but who moves from the property rather than pay an "excessive" rent upon completion of a project (economic displacement); who is required to relocate temporarily, but not permanently, while the project is underway; or who must move permanently to other space in the building/complex.

Therefore, to protect such tenant-occupants, and ensure consistency with other HUD-assisted Programs, § 889.265(e) would, by regulation, provide that a tenant, who moves permanently because the terms and conditions of continued occupancy, temporary relocation, relocation within

the building/complex are unreasonable, will qualify as a "displaced person" who is entitled to relocation assistance at levels identical to those required in 49 CFR part 24.

Paragraph § 889.265(e)(1) contains standard HUD policy directing Sponsors and Owners to take all reasonable steps to minimize displacement.

To qualify for a capital advance under part 889, the Sponsor/Owner must certify that it will comply with the URA, implementing regulations at 49 CFR part 24 and the provisions of § 889.265(e). The Sponsor/Owner must ensure such compliance notwithstanding any third party's contractual obligation to the Sponsor/Owner to carry out such requirements.

This interim rule also makes corresponding changes to the existing section 202 program (see 24 CFR 885.1, 885.5, 885.9, 885.740(e) and 885.780(a)(4) herein). The Department will issue further guidance in program Handbooks on compliance with URA requirements, including the appeal process under §§ 885.9(d) and 889.265(e)(4).

(g) Section 889.230 generally reflects existing site and neighborhood standards in § 885.730, with the exception of the undue concentration standard in § 885.730(d). The Department is revisiting the issue in response to a recent challenge to how the undue concentration standard has been implemented in practice. In *La Plaza Defense League* v. *Kemp*, 742 F. Supp. 792 (S.D.N.Y. 1990), it was ruled that the Department had acted contrary to its undue concentration regulations. In response to this decision, and to a report from the Office of Inspector General, the Department is studying undue concentration. When this interim rule is published as a final rule, any new language that is developed will be included.

C. Section by Section Summary of Parts 885 and 889

1. Amendments to Part 885

Section 885.1 has been amended to apply to all fund reservation made before October 1, 1990. The labor standards at § 885.740(d) have been revised to reflect the amendments made by section 801(j)(5) and 955 of the NAH Act. Davis-Bacon requirements do not apply to any volunteer services provided before, on, or after November 28, 1990. However, this section may not be construed to require the repayment of any wages paid before November 28, 1990, for services provided before such date.

2. Part 889

In order to simplify program participation, Part 889 reflects Part 885's organization. Subpart A provides a general program description and the purpose and policy of the Program. Subpart B provides application procedures and program requirements. Subpart C details selection of applications and duration of fund reservations. Subpart D contains capital advance repayment requirements. Subpart G provides for technical assistance. Each of these subparts is described below noting major differences from the part 885 section 202 Direct Loan Program for Elderly Housing. Subpart E has been reserved for project rental assistance contract requirements. Subpart F has been reserved for project management requirements.

a. *Subpart A—General.* This Subpart provides the purpose and policy of the Program. It indicates that part 889 applies to projects for the elderly that receive capital advances and project rental assistance payments under section 202 of the Housing Act of 1959, as amended. It also contains definitions used in part 889. Major highlights of the definitions follow. Acquisition is defined to mean the purchase (or otherwise obtaining title to) of existing housing and related facilities from the RTC. Since one of the major differences from the section 202 Direct Loan Program made by this Program is the provision of services, the following terms have been defined (as defined in section 202 statute): Community space, frail elderly, service expenses and supportive housing for the elderly. Activities of daily living is also defined (its definition is derived from the HOPE for Elderly Independence Program Guidelines (56 FR 4506, February 4, 1991)).

(b) *Subpart B—Application Procedures and Program Requirements.* HUD will allocate amounts available for capital advances for supportive housing for the elderly in accordance with 24 CFR part 791. Upon determining the amount of capital advance fund authority to be allocated to each Field Office, HUD will publish a NOFA, and each Field Office receiving an allocation shall publish a single invitation in newspapers of general circulation and any minority newspapers serving the competitive areas in the Field Office jurisdiction.

Application contents are also detailed in this subpart. Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). This program rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest is a new statutory requirement for a certification by the appropriate State or local agency (typically the Area Agency on Aging) that the services identified in the application are well designed for the category or categories of elderly persons the housing is intended to serve. Therefore, the Sponsor must develop and submit its service plan to the appropriate agency to obtain the required certification. In view of the short time frame in FY 1991 for submission of applications to HUD, this certification will be accepted even if not signed and submitted to the Field Office by the application deadline date, if it is received by the Field Office within 30 days following the application deadline date.

Subpart B also contains limits on the number of units. No organization may participate as Sponsor or Co-sponsor in the filing of an application(s) for a reservation of section 202 funds in a single region in a single fiscal year in excess of that necessary to finance the construction, rehabilitation of a structure or portion of a structure, or acquisition from the RTC of 300 units of housing and related facilities. The national limit is 10 percent of the total units allocated in all Regions. Design and cost standards, development cost limits, minimum capital investment, operating cost standards, prohibited facilities, site and neighborhood

standards and other miscellaneous Federal requirements are also provided in Subpart B.

HUD will establish operating cost standards based on the average annual operating cost of comparable housing for elderly households in each field office, and will adjust the standard annually based on appropriate indices of increase in housing costs such as the Consumer Price Index. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project rental assistance reserved for a project. Consistent with new requirements for development cost limits in the NAH Act, limits to determine the capital advance amount to be reserved for new construction or rehabilitation projects for the elderly are provided in this interim rule.

(c) *Subpart C—Selection of Applications and Duration of Fund Reservation.* This subpart provides guidance on how applications for fund reservations will be reviewed. The threshold requirements, selection criteria and the permissible corrections after application submission are incorporated in this subpart. This subpart also explains how applications will be approved and the duration of section 202 fund reservations.

(d) *Subpart G—Technical Assistance.* This subpart provides that the Secretary shall make available appropriate technical assistance to assure that applicants (Sponsors) having limited resources, particularly minority applicants, are able to participate more fully in the Supportive Housing for the Elderly Program.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing 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 and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued on February 17, 1989. Analysis of the rule indicates that it does not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide capital advances to private nonprofit organizations to expand the supply of supportive housing for the elderly. Although small entities will participate in the program, the rule would not have a significant impact on them.

On February 26, 1990, the Department published an interim final rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and 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 interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

Family Impact

The General Counsel, as the Designated Official for Executive order 12606, the Family, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

This interim rule was listed as item 1308 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17389) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

The collection of information requirements contained in this interim rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

The information collection requirements in this rule are those specified in the application for a capital advance (see application contents, § 889.270). The exhibits required in the application (§ 889.270(c)) are primarily those previously required in the Section 202 Direct Loan program, with some additional items that are mandated by the provisions of section 801 of the NAH Act (e.g., § 889.270(b)(3), (c)(3), and (c)(20)). While the application requirements continue to include substantial documentation and narrative descriptions of the proposed project, the Department has reduced the burden from an estimated 63.9 hours in the previous program to an estimated 55.2 hours in the new program.

Some forms previously required have been eliminated (e.g., Forms 93433 and 1732A) and certifications (e.g., § 889.270(c)(18)–(26)) or less lengthy responses (e.g., § 889.270(c) (13) and (17)) are substituted for some more lengthy exhibits previously required. In addition, the Department believes many applicants will be able to complete their applications in fewer hours than estimated due to Field Office workshops, previous participation in the section 202 direct loan application process and redesigned exhibits (e.g., the exhibit for § 889.270(c)(12) is less time consuming because much of the information may be resubmitted with minor updates from previous year write-ups (application exhibits)).

The Department expects approximately 60% of the approximately 800 applications for the new Elderly Supportive Housing Program or 480 applications, to be from previous participants in the Section 202 Direct Loan Program. Sponsors who have applied in previous years will be able to submit previous write-ups (previous application exhibits) or update all or part of previously-submitted exhibits on applicant experience (§ 889.270(c)(7)), financial capacity (§ 889.270(c) (2) and (7)), and similar issues (see e.g.,

§ 889.270(c)(4)–(9)). New applicants who are not owners or managers of HUD projects or who have few such projects to report, will be able to complete exhibits on status of their existing HUD projects without incurring the estimated burden hours associated with applicants who have numerous HUD projects (see e.g., § 889.270(c) (5), (7), and (12)(iv)). Finally, for that large portion of section 202 applicants who are currently recipients of funding under Federal, state or local programs that underwrite supportive services, the exhibit related to provision of supportive services (§ 889.270(c)(17)) can be adapted from other, similar materials submitted to those funding agencies.

Any nonprofit organization with experience in providing housing or services for elderly people will have readily available the information needed to complete exhibits or to serve as exhibits on community ties (§ 889.270(c)(4)), experience in providing housing or services (§ 889.270(c) (5), (7) and (8)), experience serving minorities (§ 889.270(c)(7)(ii)), and description of residents and supportive services—a total of six exhibits as itemized in the Application Package distributed to potential applicants.

Given the substantial funding being provided to successful applicants, and the need to assure that applicants selected will be able to fulfill the 40-year obligation to provide housing for the eligible population, the Department believes it is in the public interest to require an application package with this level of documentation. Without the specific information provided by these exhibits, it would not be possible to satisfactorily evaluate the proposed projects and the capacity of the applicants.

The sections of the interim rule identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows: Information Collection Matrix.

TABLE 1—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection (application submission requirements) (2502–0267)	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Part 1, Exhibit 1, Form HUD–92013 (OMB 2502–0029)	889.270(b)(a)	800	1	800	1.0	800
Exhibit 2, Information on Consultant		Not subject ot OMB approval per OMB 5/1/84				
Exhibit 3, Evidence on Sponsor's nonprofit status	889.270(c)(2)	800	1	800	2.0	1,600
Exhibit 4, Evidence of Sponsor's authority to sponsor project	889.270(c)(3)	800	1	800	1.0	800
Part 2, Exhibit 5, Description of community ties	889.270(c)(4)	800	1	800	0.5	400
Exhibit 6, Form HUD–2530 (OMB 2502–0118)	889.270(c)(5)	800	1	800	0.6	480
Exhibit 7, Description of legal actions against Sponsor	889.270(c)(6)	800	1	800	0.5	400
Exhibit 8, Description of experience providing housing	889.270(c)(7)	800	1	800	3.0	2,400
Exhibit 9, Description of past involvement	889.270(c)(8)	800	1	800	3.0	2,400
Exhibit 10, Board Resolution to support project	889.270(c)(9)	800	1	800	0.4	320
Exhibit 11, Description of experience serving minorities	889.270(c)(10)	800	1	800	1.0	800
Part 3, Exhibit 12, Statement on other 202 or 811 applications submitted	889.270(c)(11)	800	1	800	2.0	1,600
Exhibit 13, Estimate of start-up expenses	889.270(c)(12)	800	1	800	4.0	3,200
Exhibit 14, Evidence of ability to provide funds for project (HUD–92290 OMB 2502–0160).	889.270(c)(13)	800	1	800	4.0	3,200
Part 4, Exhibit 15, Need for supportive housing	889.270(c)(13)	800	1	800	3.0	2,400
Exhibit 16, Description of site and evidence of site control	889.270(c)(14)	800	1	800	7.0	5,600
Exhibit 17, Statement on relocation (OMB 2502–0433)	889.270(c)(15)	[1] 40	1	40	4.0	160
Part 5, Exhibit 18, Description of proposed design of project	889.270(c)(16)	800	1	800	8.0	6400
Exhibit 19, Floor plans	889.270(c)(17)	800	1	800	5.0	4000
Part 6, Exhibit 20, Description of residents and supportive services (HUD–92013E OMB 2502–0232).	889.270(c)(18)	800	1	800	4.0	3200
Part 7, Exhibit 21, Equal Opportunity certifications		Exempt per 5 CFR Part 1320				
Exhibit 22, CHAS certification from local public official	889.270(c)(20)	[2] 800	1	800	0.4	320
Exhibit 23, Certification on provision of services	889.270(c)(21)	800	1	800	0.4	320
Exhibit 24, Certification on E.O. 12372	889.270(c)(22)	800	1	800	0.4	320
Exhibits 25–29, Certifications (SF–424 OMB 0348–0043)		Exempt per 5 CFR Part 1320				
Totals		800	1	800	55.2	41,120

[1] Based on experience, no more than 5 percent of the proposals will involve relocation.
[2] For Fiscal Year 1991, the certification from the local public official will not be required. The respondent will only be required to state, not applicable. The certification will be required beginning in Fiscal Year 1992.

List of Subjects

24 CFR Part 750

Grant Programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR parts 750 and 885 and adds a new 24 CFR part 889, as set forth below.

PART 750—DISCLOSURE AND VERIFICATION OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS AND PARTICIPANTS IN CERTAIN HOUSING ASSISTANCE PROGRAMS

1. The authority citation for part 750 continues to read as follows:

Authority: Sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); secs. 3, 6, 8, 17, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437f, 1437o, 1437(ee)); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 750.3 [Amended]

2. Section 750.3 is amended by revising paragraphs (i) through (l) and adding a new paragraph (m) to read as follows:

* * * * *

(i) Part 889, Supportive Housing for the Elderly.

(j) Part 900, section 23 Housing Assistance Payments Program—New Construction and Substantial Rehabilitation.

(k) Part 904, Low Rent Housing Homeownership Opportunities.

(l) Part 905, Indian Housing.

(m) Part 960, Admission to, and Occupancy of Public Housing.

3. Section 750.5 definitions of "Assistance applicant," "Entity applicant," "Individual owner applicant," and "Participant" are amended to read as follows:

§ 750.5 Definitions.

As used in this part:

Assistance applicant has the following meaning for the programs referred to in § 750.3:

(1) Parts 880, 881, 882, 883, 884, 885, 886, 887, 889 and 900: A family that seeks rental assistance under the program.

(2) Part 904: A prospective homebuyer under the program.

(3) Part 905: A prospective tenant or homebuyer under the program.

(4) Part 960: A prospective tenant under the program.

* * * * *

Entity applicant means a partnership, corporation, or any other association or entity that seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, 886, and 889. Entity applicant does not include a public entity, such as a PHA or State Housing Finance Agency.

* * * * *

Individual owner applicant means an individual who seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, 886 or 889.

Participant has the following meaning for the programs referred to in § 750.3:

(1) Parts 880, 881, 882, 883, 884, 885, 886, 887, 889 and 900: A family receiving rental assistance under the program.

(2) Part 904: A homebuyer under the program.

(3) Part 905: A tenant or homebuyer under the program.

(4) Part 960: A tenant under the program.

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

4. The authority citation for part 885 continues to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q), as amended; sec. 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. Section 885.1(c) is revised to read as follows:

§ 885.1 Purpose and policy.

* * * * *

(c) *Applicability.* (1) This part applies to all fund reservations made before October 1, 1990.

(2) Subpart B of this part applies to projects for elderly or handicapped families that receive reservations under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the United States Housing Act of 1937. No project for handicapped (primarily nonelderly) families is eligible for loans or housing assistance payments under Part B, except under a reservation of loan and contract authority made before October 1, 1988.

(3) Subpart C of this part applies to projects for nonelderly handicapped families receiving reservations under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959.

6. The definition of "Handicapped person" or individual in § 885.5 is revised to read as follows:

§ 885.5 Definitions.

* * * * *

Handicapped person or individual means any adult having a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5) *i.e.*, if he or she has a severe chronic disability which that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age twenty-two;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitation in three or more of the following areas of major life activity:

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living,

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong, or extended duration and are individually planned and coordinated. A person shall also be considered to be disabled if he or she has a chronic mental illness, *i.e.*, if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions. Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in section 202 projects designed for the physically disabled, developmentally disabled or chronically mentally ill depending upon the nature of the person's disability. A person whose sole impairment is alcoholism or drug addition (*i.e.*, who does not have a developmental disability, chronic mental illness or physical disability which is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the section 202 program.

7. A new § 885.9 is added, to read as follows:

§ 885.9 Displacement, relocation, and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Borrowers shall assure that they have

taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the comparable replacement dwellings are located in areas of minority concentration, minority persons also must be given, if possible, referrals to suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the Sponsor's/Borrower's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponsor/Borrower. A lower-income person who is dissatisfied with the Sponsor's/Borrower's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(e) *Responsibility of Sponsor/Borrower.* The Sponsor/Borrower shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Borrower shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The Sponsor/Borrower shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(f) *Definition of a displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(i) After notice by the Sponsor/Borrower to move permanently from the property if the move occurs on or after (A) the date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or (B) the date that the Sponsor obtains control of an approvable site, if such control is obtained after the submission of an application to HUD:

(ii) Before the date described in paragraph (f)(1)(i) of this section, if the Sponsor, Borrower or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project;

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs;

(A) The tenant moves after execution of the Agreement between the Sponsor/Borrower and HUD, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) The tenant's monthly rent and estimated average monthly utility costs before the Agreement; or

(*2*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is lower income, or 30 percent of gross household income, if the tenant is not lower income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling in the same building/complex but is not offered reimbursment for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:

(i) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation or a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The Sponsor/Borrower may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

8. Section § 885.740 (e) is revised to read as follows:

§ 885.740 Other Federal requirements.

* * * * *

(e) *Displacement, relocation, and acquisition*—(1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Borrowers shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (e)(6) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the comparable replacement dwellings are located in areas of minority concentration, minority persons also shall be given, if possible, referrals to suitable, decent, safe and sanitary

replacement dwellings not located in such areas.

(3) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(4) *Appeals.* A person who disagrees with the Sponsor's/Borrower's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponor/Borrower. A lower-income person who is dissatisfied with the Sponsor's/Borrower's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(5) *Responsibility of Sponsor/Borrower.* The Sponsor/Borrower shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Borrower shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The Sponsor/Borrower shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(6) *Definition of a displaced person.* (i) For purposes of this paragraph § 885.740(e), the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(A) After notice by the Sponsor or Borrower to move permanently from the property if the move occurs on or after:

(*1*) The date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or

(*2*) The date that the Sponsor obtains control of an approvale site, if such control is obtained after the submission of an application to HUD;

(B) Before the date described in paragraph (6)(i)(A) of this section, if the Sponsor, Borrower or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the agreement between the Borrower and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of

(*i*) The tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(*ii*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is lower income, or 30 percent of gross household income, if the tenant is not lower income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*i*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or

(*ii*) Other conditions of the temporary relocation are not reasonable, or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (e)(6)(i) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(B) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation, or a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(iii) The Sponsor (Borrower) may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

9. In § 885.780, paragraph (a)(4) is revised to read:

(a) * * *

(4) A statement that:

(i) Identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the loan application (or date of initial site control, if later);

(ii) Indicates the estimated cost of relocation payments and other services; and

(iii) Identifies the staff organization that will carry out the relocation activities. If any of the relocation costs will be funded from sources other than the section 202 loan, the Sponsor must provide evidence of a firm commitment of these funds.

* * * * *

10. A new part 889 is added to chapter VIII, title 24 of the Code of Federal Regulations, to read as follows:

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

Subpart A—General

Sec.

Subpart B—Application Procedures and Program Requirements

Authority: Sec. 202, Housing Act of 1959, as amended (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 889.100 Purpose and policy.

(a) *Purpose.* The program under this part provides Federal capital advances and project rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) for housing projects serving elderly households. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A capital advance made under this part shall be used to finance the construction or rehabilitation of a structure or portion thereof or the acquisition of a structure from the Resolution Trust Corporation to provide supportive housing for the elderly and may include the cost of real property acquisition, site improvement, conversion, demolition, relocation and other expenses of supportive housing for the elderly.

(c) *Applicability.* This part applies to projects for the elderly that receive capital advances and project rental assistance payments under section 202 of the Housing Act of 1959, as amended.

§ 889.105 Definitions.

As used in this part—

Acquisition means the purchase (or otherwise obtaining title to) of existing housing and related facilities from the Resolution Trust Corporation.

Act means section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act, 12 U.S.C. 1701q.

Activities of daily living (ADL) means eating, dressing, bathing, grooming and household management activities as further described as follows:

(1) *Eating:* May need assistance with cooking, preparing or serving food, but *must* be able to feed self);

(2) *Bathing:* May need assistance in getting in and out of the shower or tub, but *Must* be able to wash self);

(3) *Grooming:* May need assistance in washing hair, but *Must* be able to take care of personal appearance;

(4) *Dressing: Must be able* to dress self, but may need occasional assistance; and

(5) *Home management activities:* May need assistance in doing housework, grocery shopping or laundry, or getting to and from activities such as going to the doctor and shopping, but *Must* be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

Affiliated entities means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors that have any identity of interest themselves or their principals.

Agreement to enter into project rental assistance contract (APRAC) means the agreement between the Owner and HUD which provides that, upon satisfactory completion of the project, HUD will enter into the PRAC with the Owner.

Annual income is defined in part 813 of this chapter.

Application means the application for a fund reservation, including all required forms and exhibits submitted in response to an invitation for such applications.

Assistant Secretary means the Assistant Secretary for Housing—Federal Housing Commissioner.

Assisted unit means a dwelling unit that is eligible for assistance under a PRAC.

Congregate space (hereinafter referred to as community space) means space for cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities. Community spaces exclude offices, halls, mechanical rooms, laundry rooms, parking areas, dwelling units and lobbies.

Development cost means the cost of construction, rehabilitation of housing and related facilities, and of the land on which they are located, including necessary site improvements and such other expenses as may be determined by the Assistant Secretary properly to be attributable to the capital cost of the construction, rehabilitation or development of the housing and related facilities. Development Cost also means the cost of acquiring existing housing and related facilities from the Resolution Trust Corporation and the cost of rehabilitation, alteration, conversion or improvement, including the cost of the land on which the housing and related facilities are located.

Elderly person means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

Field office means any HUD Area, Service, Insuring or Regional Office which is delegated authority to process applications under the section 202 program.

Frail elderly means an elderly person who is unable to perform at least 3 activities of daily living as defined in this section. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

Household (eligible household) means an elderly household that meets the project occupancy requirements approved by HUD and, if the household occupies an assisted unit, meets the very low-income requirements described in § 813.102 of this chapter, as modified by the definition of annual income in this section.

Housing and related facilities means rental housing structures constructed, rehabilitated or acquired from the Resolution Trust Corporation as permanent residences for use by elderly households. The term includes necessary community space. This term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Independent public accountant means a certified public accountant or a licensed or registered public accountant, having no business relationship with the Owner or Sponsor except for the performance of audit, systems work and tax preparation. If not certified, the independent public accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant", only certified public accountants may be used.

Operating costs means HUD-approved expenses related to the provision of housing and includes:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter and coordination of services.

(2) Maintenance expenses, including routine and minor repairs and groundskeeping.

(3) Security expenses.

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for households.

(5) Taxes and insurance.

(6) Allowances for reserves.

(7) Allowances for services.

Owner means a private nonprofit corporation which may be established by the Sponsor and which will receive a capital advance and project rental assistance payments to develop and operate supportive housing for the elderly as its legal owner. Private nonprofit organization means any incorporated private institution or foundation:

(1) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(2) Which has a governing board.

(i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located, and

(ii) Which is responsible for the operation of the housing assisted under this part; and

(3) Which is approved by the Secretary as to administrative and financial responsibility.

Owner does not mean a public body or the instrumentality of any public body. The purposes of the Owner must include the promotion of the welfare of the elderly. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Because of the nonprofit nature of the section 202 program, no officer or director, or trustee, member, stockholder or authorized representative of the Owner is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

PRAC (project rental assistance contract) means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC.

Project account means a specifically identified and segregated account for each project which is established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PRAC each year.

Project rental assistance payment means the payment made by HUD to the Owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per unit operating expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a "vacancy payment", may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the PRAC.

Region means any one of the ten HUD Regions.

Rehabilitation means the improvement of the condition of a property from deteriorated or substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure must require 15 percent or more of the estimated development cost to rehabilitate the project to a useful life of 55 years.

Replacement Reserve Account means a project account into which specified funds are deposited and which may be used only with the approval of the Secretary for repairs, replacement and capital improvements to the project.

Secretary means the Secretary of Housing and Urban Development.

Services expenses means those costs needed to provide the necessary services for the elderly tenants which may include, but are not limited to: Health related activities, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services as well as transportation where necessary to facilitate access to these services.

Sponsor means any private nonprofit entity:

(1) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor or individual;

(2) Which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom; and

(3) Which is approved by the Secretary as to administrative and financial capacity and responsibility.

"Sponsor" does not mean a public body or the instrumentality of a public body. Because of the nonprofit nature of the section 202 program, no officer or director of the Sponsor is permitted to have any financial interest in any contract with the Owner in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever. The prohibition in the preceding sentence does not apply to any management contracts (including the management fees associated therewith) entered into by the Owner with the Sponsor or its nonprofit affiliate. In the case of a Sponsor or its nonprofit affiliate managing the project where persons are in a paid capacity with either the Sponsor or nonprofit affiliate, only two such persons would be permitted to serve as directors of the nonprofit organization (Owner) and only in a non-voting capacity.

Start-up expenses mean necessary costs (to plan a section 202 project) incurred by the Sponsor or Owner prior to initial closing.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

Supportive housing for the elderly means housing that is designed

(1) To meet the special physical needs of elderly persons and

(2) To accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons that the housing is intended to serve.

Tenant payment to Owner equals total tenant payment less utility allowance, if any.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Utility allowance is defined in part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in part 813 of this chapter.

Vacancy payment means the project assistance payment made to the Owner by HUD for a vacant assisted unit if certain conditions are fulfilled, as provided in the PRAC. The amount of the vacancy payment is 80 percent of the HUD-approved per unit operating cost prorated based on the length of the vacancy period. No payment shall be made for a vacancy period longer than 60 days.

Very low-income has the same meaning as given the term "very low-income" under section 3(b)(2) of the United States Housing Act of 1937 (*i.e.*, generally 50 percent or less of the median family income for the area with adjustment for smaller and larger households).

Subpart B—Application Procedures and Program Requirements

§ 889.200 Allocation of authority.

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for elderly households, less any amounts made available for amendments of fund reservations made in prior years and set aside for technical assistance.

§ 889.205 Notice of fund availability and invitations for applications.

(a) Announcement of fund availability. Following an allocation of authority under § 889.200, HUD shall publish a Notice of Fund Availability (NOFA) in the Federal Register indicating:

(1) The amount of capital advance authority (and approximate number of units) being made available for housing for elderly households within the Field Office;

(2) The date by which the Field Offices will publish Invitations for Applications for Section 202 Fund Reservations;

(3) The deadline date for receipt of applications; and

(4) Other appropriate guidance to prospective Sponsors.

(b) Invitation for applications. Each Field Office receiving an allocation shall publish an Invitation for applications for section 202 fund reservations in newspapers of general circulation and any minority newspapers serving the Field Office jurisdiction. Immediately after the NOFA is published, the Field Office shall also notify minority media, minority organizations involved in housing and community development, and groups with a special interest in housing for the elderly, including the State and area agencies on aging and the applicable state single point of contact (Executive Order 12372). Copies of the Invitation shall be available in the Field Office. The Field Office will base its determination of the acceptance of each application for a fund reservation on the information provided in the application.

(c) The Invitation shall state:

(1) The area(s) where capital advance authority is being made available, the amount of such authority and the approximate number of units this amount is expected to assist.

(2) That copies of the applicable regulations, instructions, forms and other program information may be obtained at the Field Office.

(3) The time and place of the Field Office workshop.

(4) The date, time, and place applications will be accepted.

(5) The deadline date for receipt of applications.

§ 889.210 Project standards.

(a) *Property standards.* Projects under this subpart must comply with HUD Minimum Property Standards.

(b) *Limit on number of bedrooms.* Resident units in projects under this subpart are limited to efficiencies or one-bedroom units. If a resident manager is proposed for a project, up to two-bedrooms could be provided for the resident manager unit.

(c) *Accessibility requirements.* Projects under this subpart must comply with Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, appendix A, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

§ 889.215 Limits on number of units.

(a) No organization shall participate as Sponsor or Co-sponsor in the filing of an application or applications for a reservation of section 202 funds under this subpart in a single region in a single fiscal year in excess of that necessary to finance the construction or rehabilitation of a structure or portion of a structure, or acquisition from the Resolution Trust Corporation of 300 units of housing and related facilities. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or non-affiliated entities.

(b) The national limit for any one applicant is 10 percent of the total units allocated in all Regions.

(c) Affiliated entities which submit separate applications shall be deemed to be a single entity for purposes of these limits.

§ 889.220 Design and cost standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas and jacuzzis. Dishwashers, trash compactors, and washers and dryers in individual units will not be funded. The use of durable materials to control or reduce maintenance, repair and replacement costs is not an excess amenity.

(b) *Community spaces.* The costs of construction of community spaces may not exceed 10 percent of the total cost of construction, except as provided in paragraph (c) of this section.

(c) *Exceptions.* HUD may approve a project that does not comply with the design and cost standards of paragraphs (a) and (b) of this section if:

(1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or

(2) The proposed project involves rehabilitation or acquisition from the Resolution Trust Corporation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 889.245, unless the Sponsor indicates a willingness to pay the excess costs from other than capital advance proceeds.

§ 889.225 Prohibited facilities.

Project facilities may not include commercial spaces (this does not include areas for convenience items operated by the project), infirmaries, nursing stations, and spaces for overnight care.

§ 889.230 Site and neighborhood standards.

All sites must meet the following site and neighborhood requirements:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full

compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 and implementing HUD regulations.

(c) New construction sites must meet the following site and neighborhood requirements:

(1) The site must not be located in an area of minority elderly concentration except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority elderly to non-minority elderly residents in the area.

(2) A project may be located in an area of minority elderly concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority elderly households, in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).

(3)(i) "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority elderly households and in relation to the racial mix of the locality's population.

(ii) Units may be considered to be "comparable opportunities" if they have the same household type (elderly) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority elderly households in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority elderly households who wish to find housing outside areas of minority concentration.

(E) Minority elderly households have benefitted from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households outside of areas of minority concentration.

(F) A significant proportion of minority elderly households has been successful in finding units in non-minority areas under the section 8 Certificate and Housing Voucher programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An "overriding housing need", however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(e) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

§ 889.235 Prohibited relationships.

(a) *Conflicts of interest.* Officers, directors, trustees, members, stockholders and authorized representatives of the Sponsor, and officers and directors of the Owner may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development and operation of the project. Management contracts (including associated management fees) entered into by the Owner with the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than two persons salaries by the Sponsor or management affiliate serve as nonvoting directors on the Owner's board of directors.

(b) *Interest in earnings.* No part of the net earnings of the Owner or Sponsor may inure to the benefit of any private shareholder, contributor, or individual.

(c) *Control of owner or Sponsor.* Neither the Owner nor the Sponsor may be controlled by, or under the direction of, persons or entities seeking to derive profit or gain as a result of activities undertaken by the Owner or Sponsor.

(d) *Identity of interest.* A person or an entity may not provide services to a project in more than one of the following capacities: attorney, architect, contractor, housing consultant, management agent, or seller of the site for the project, except that the same person or entity may serve a project as management agent and housing consultant.

§ 889.240 Amount and terms of capital advances.

(a) *Amount of capital advances.* The amount of capital advances approved shall be the amount stated in the notice of fund reservation, including any adjustment approved by HUD before the final closing. The amount of capital advances may not exceed the smallest of the amounts provided in § 889.245.

(b) *Estimated development cost.* The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Sponsor under § 889.220.

§ 889.245 Development cost limits.

(a) To determine the capital advance amount to be reserved for new construction or rehabilitation projects for the elderly, the following development cost limits, shall be used:

(1) *For nonelevator structures:*

$28,032 per family unit without a bedroom;
$32,321 per family unit with one bedroom;
$38,979 per family unit with two bedrooms.

(2) *For elevator type structures:*

$29,500 per family unit without a bedroom;
$33,816 per family unit with one bedroom;
$41,120 per family unit with two bedrooms.

(3) *Increased capital advance limits.*

(i) The Assistant Secretary may increase the cost limits set forth in paragraphs (a) (1) and (2) of this section by up to 140 percent in any geographic area where the cost levels require, and may increase the cost limits by up to 160 percent on a project-by-project basis.

(ii) If the Assistant Secretary finds that high construction costs in Alaska, Guam, or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the cost limits provided in this paragraph (a), the amount of capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(4) *Rehabilitation projects—additional limits.* A capital advance that involves a project to be rehabilitated is subject to the following additional limitations:

(i) *Property held in fee.* If the Sponsor is the fee simple owner of a property unencumbered by a mortgage, the capital advance amount may not exceed 100 percent of the cost of the proposed rehabilitation.

(ii) *Property subject to existing mortgage.* If the Sponsor owns the property subject to an outstanding indebtedness that is to be refinanced with part of the capital advance, the maximum capital advance amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before the rehabilitation, as determined by HUD.

(5) *Property to be acquired.* If the property is to be acquired by the Owner from an entity other than the Sponsor, and the purchase price is to be financed with a part of the section 202 capital advance, the maximum capital advance amount may not exceed the cost of the rehabilitation plus the portion of the purchase price that does not exceed the fair market value of such land and improvements before the rehabilitation, as determined by HUD.

(6) *Leaseholds.* If a capital advance is secured by a leasehold estate rather than by a fee simple estate, the amount of the capital advance attributable to the cost of the property may not exceed the value of the leasehold estate.

(b) Periodically, the Secretary shall establish the development cost limits by market area for various types and sizes of supportive housing for the elderly by publishing a notice of the cost limits in the **Federal Register.** The cost limits shall reflect:

(1) The cost of construction or rehabilitation of supportive housing for the elderly that meets applicable State and local housing and building codes;

(2) The cost of movables (*e.g.*, movable equipment) necessary to the basic operation of the housing, as determined by the Secretary;

(3) The cost of special design features necessary to make the housing accessible to elderly persons;

(4) The cost of special design features necessary to make individual dwelling units meet the physical needs of elderly project residents;

(5) The cost of community space necessary to accommodate the provision of supportive services to elderly project residents;

(6) If the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the National Affordable Housing Act; and

(7) The cost of land, including necessary site improvement.

(c) Annual Adjustments. The Secretary shall adjust the cost limits not less than once annually to reflect changes in the general level of construction or rehabilitation costs.

(d) Prevailing cost data. In establishing development cost limits for a given market area under this section, the Secretary shall use data that reflect currently prevailing costs of construction or rehabilitation, and land acquisition in the area.

(e) RTC Properties. In the case of existing housing and related facilities to be acquired from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act, the cost limits shall include:

(1) The cost of acquiring such housing;

(2) The cost of rehabilitation, alteration, conversion, or improvement, including the rehabilitation thereof; and

(3) The cost of the land on which the housing and related facilities are located.

In the case of existing housing and related facilities which require no rehabilitation and are to be acquired from the Resolution Trust Corporation, 85 percent of the development cost limits identified in paragraph (a) of this section shall be used to calculate the capital advance amount to be reserved.

(f) The Secretary shall use the development cost limits established under paragraphs (a) and (d) of this section adjusted by locality to calculate the fund reservation amount of the capital advance to be made available to individual Owners. Owners which incur actual development costs that are less than the amount of the initial fund reservation shall be entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage shall be increased to 75 percent for Owners which add energy efficiency features which:

(1) Exceed the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the National Affordable Housing Act;

(2) Substantially reduce the life-cycle cost of the housing;

(3) Reduce gross rent requirements; and

(4) Enhance tenant comfort and convenience.

(g) Secretary approval. The Replacement Reserve Account established under paragraph (f) of this section may only be used with the approval of the Secretary for repairs, replacements and capital improvements to the project.

(h) Design flexibility. The Secretary shall, to the extent practicable, give Owners the flexibility to design housing appropriate to their locations and proposed resident population subject to HUD's design and cost standards.

(i) An Owner shall be permitted voluntarily to provide funds from non-Federal sources for amenities and other features of appropriate design and construction suitable for supportive housing for the elderly if the cost of such amenities is:

(1) Not financed with the capital advance, and

(2) Is not taken into account in determining the amount of Federal assistance or of the tenant payments.

§ 889.250 Owner deposit (Minimum Capital Investment).

The Owner must deposit one-half of one percent (0.5%) of the HUD-approved capital advance not to exceed $25,000 in a special escrow account to assure the Owner's commitment to the housing. The Minimum Capital Investment will be placed in escrow at the initial closing of the capital advance and will be held by HUD or by a HUD-approved escrow

agent. If construction starts within the initial 18 months of the fund reservation, HUD will waive one-half of the Minimum Capital Investment, which would be required under the aforementioned formula, at the time of initial closing. If final closing occurs within six months after construction completion, HUD will approve the return of all remaining funds not used to cover operating deficits during the first three years of operation. If final closing does not occur within six months after project completion, unless extended by the Field Office for up to two months due to justifiable delay, the balance remaining at the end of three years will not be returned and shall be deposited in the Replacement Reserve Account.

§ 889.255 Operating cost standards.

HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for elderly persons in each Field Office, and shall adjust the standard annually based on appropriate indices of increase in housing cost such as the Consumer Price Index. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project under § 889.305(a)(2). The Owner must submit estimates based on project design, maintenance and services provided at the time of issuance of conditional and firm commitment stages of processing.

§ 889.260 Provision of services.

(a) In carrying out the provisions of this part, the Secretary shall ensure that housing assisted under this part provides a range of services tailored to the needs of the category or categories of elderly persons (including frail elderly persons) occupying such housing. Such services may include:

(1) Meal service adequate to meet nutritional need;

(2) Housekeeping aid;

(3) Personal assistance;

(4) Transportation services;

(5) Health-related services; and

(6) Such other services as the Secretary deems essential for maintaining independent living.

(b) The Secretary shall ensure that Owners have the managerial capacity to:

(1) Assess on the ongoing service needs of residents;

(2) Coordinate the provision of supportive services and tailor such services to the individual needs of residents; and

(3) Seek on a continuous basis new sources of assistance to ensure the long-term provision of supportive services. Any cost associated with this paragraph shall be an eligible cost under the contract for project rental assistance. Any cost associated with the employment of a service coordinator shall also be an eligible cost except where the project is receiving congregate housing services assistance under section 802 of the National Affordable Housing Act. The HUD-approved service costs will be an eligible expense to be paid from project rental assistance, not to exceed $15 per unit per month. The balance of service costs shall be provided from other sources, which may include co-payment by the tenant receiving the service. Such co-payment shall not be included in the Total Tenant Payment.

§ 889.265 Other Federal requirements.

(a) *Nondiscrimination and equal opportunity.* Participation in this program requires compliance with:

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and its implementing regulations at 24 CFR part 100; Executive Order No. 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR part 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects and the implementing regulations at 24 CFR part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women-Owned Business Enterprises);

(6) The affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and

(7) The fair housing advertising guidelines and poster regulations, 24 CFR parts 109 and 110.

(b) *Environmental.* The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, and the Coastal Barrier Resources Act (16 U.S.C. 3601) apply to this program.

(c) *Flood insurance.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) applies to this program.

(d) *Labor standards.* (1) Any contract for the construction (including rehabilitation) of affordable housing with 12 or more units assisted with funds made available under this part shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5), shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and such contracts shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (42 U.S.C. 327–333).

(2) The prevailing wage provisions of paragraph (d)(1) of this section shall not apply to an individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(3) Sponsors, Owners, contractors and subcontractors must comply with all related rules, regulations, and requirements.

(e) *Displacement, relocation, and real property acquisition*—(1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (e)(6) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his

or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the comparable replacement dwellings are located in areas of minority concentration, minority persons also must be given, if possible, referrals to suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(3) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(4) *Appeals.* A person who disagrees with the Sponsor's/Owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponsor/Owner. A lower-income person who is dissatisfied with the Sponsor's/Owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(5) *Responsibility of Sponsor/Owner.* The Sponsor/Owner shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this paragraph. The Sponsor/Owner shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(6) *Definition of a displaced person.* (i) For purposes of this paragraph, the term "diplaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(A) After notice by the Sponsor/Owner to move permanently from the property if the move occurs on or after:

(*1*) The date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or

(*2*) The date that the Sponsor obtains control of an approval site, if such control is obtained after the submission of an application to HUD;

(B) Before the date described in (e)(6)(i)(A) of this paragraph, if the Sponsor, Owner or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project;

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the Agreement between the Sponsor/Owner and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent and estimated average monthly utility costs before the Agreement; or the total tenant payment, as determined under 24 CFR 813.107, if the tenant is lower income, or 30 percent of gross household income, if the tenant is not lower income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (e)(6)(i) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(B) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation on a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The Sponsor/Owner may request, at any time, a HUD determination of whether a displacement is or would be covered by this paragraph.

(f) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR part 52 are applicable to this program.

§ 889.270 Application contents.

(a) *Application.* Each application shall include all of the information, materials, forms, and exhibits listed in paragraph (b) of this section. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 202 capital advance funds on the information provided in the application.

(b) *Application contents.* Each applicant (Sponsor) shall include:

(1) The name, address, and telephone number of the Sponsor(s):

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by size (efficiency, one-bedroom or two-bedroom),

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and types of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation or acquisition from the RTC).

(c) *Additional exhibits must include* (1) A Housing Consultant's Resume, Contract and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(i) Articles of Incorporation, constitution, or other organizational documents;

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, reconstruct or rehabilitate and maintain the project; and

(ii) Will form an Owner (as defined in § 889.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 889.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and support from local community groups.

(5) Evidence of any previous participation in HUD programs by the Sponsor, its officers or directors. If none, indicate "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) Any other rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/or medical facilities to the elderly and/or families; and

(ii) The Sponsor's experience in providing housing, medical facilities and/or related services to minority persons or families and in contracting with minority- and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience in serving the elderly and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitation under this Part or Part 890. Indicate by Field Office, the proposed location by city and State, and number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) a seed money loan, an application for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advances under § 889.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417 and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) A list of current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status (if finally closed, indicate month and year) and financial requirements for closing.

(13) The following additional information with respect to the proposed project:

(i) A description of the category or categories of elderly persons the housing is intended to serve and the need for supportive housing for that population in the area to be served.

(ii) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of section 202 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants.

(Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 202 project or from any other development team member.)

(iii) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(iv) A sketch of the site plan showing the general development of the site including the proposed location of the proposed building(s), streets, parking

areas and drives, service areas, and unusual site features.

(v) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(14) A statement that:

(i) Identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later);

(ii) Indicates the estimated cost of relocation payments and other services, and

(iii) Identifies the staff organization that will carry out the relocation activities.

(Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, the Sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, Sponsors are encouraged to utilize sites which involve minimal or no relocation costs.)

(15) A narrative description of the proposed housing consistent with § 889.270(c), including:

(i) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(ii) Identification and description of all community spaces, special amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these amenities, features, or community spaces would not comply with the design and cost standards, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, features or amenities.

(16) Typical unit plans and floor plans of all floors providing community space, indicating dimensions to be used for the provision of supportive services.

(17) A description of:

(i) All supportive services, if any, to be provided to the persons occupying such housing;

(ii) The manner in which such services will be provided to such persons (*i.e.*, on or off-site), including, whether a service coordinator will facilitate the adequate provision of such services, and

(iii) The public or private sources of assistance that may reasonably be expected to fund or provide such services.

(18) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(19) For applications submitted after October 31, 1991, a certification from the public official responsible for submitting a housing strategy for the jurisdiction to be served in accordance with section 105 of the NAH Act that the proposed activities are consistent with the approved Comprehensive Housing Affordability Strategy (CHAS) of the State or unit of general local government within which the eligible property is located.

(20) A certification from the appropriate State or local agency that the provisions of services identified in the application is well designed to serve the special needs of the category or categories of elderly persons the housing is intended to serve.

(21) A certification of the Sponsor(s) that the appropriate State agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the section 202 Program is covered under the State review process and, if applicable, the date the application was submitted to the State.

(22) A certification that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(23) A certification by the Sponsor(s) that the section 202 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(24) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(25) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(26) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) ,and implementing regulations at 49 CFR part 24, and 24 CFR 889.265(e).

§ 889.275 Disclosure and verification of Social Security and Employer Identification Numbers by Owners.

To be eligible to become an Owner of housing assisted under this part, the Owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

Subpart C—Selection of Applications and Duration of Fund Reservation

§ 889.300 Review of applications for fund reservation.

(a) *Preliminary evaluation.* To be eligible for selection, an Application must be received by the Field Office within the time period specified in the Invitation and must be complete. In order to determine whether an Application was complete, filed by an eligible applicant, responsive to the Invitation and acceptable for technical processing, the Field Office shall perform an initial threshold review upon receipt of the Application. To make the above determination, the Field Office shall use the following initial threshold criteria at preliminary evaluation:

(1) The application was received by HUD at the appropriate address by the date specified in the NOFA and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(2) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification letter;

(3) Sponsor, proposed facilities and proposed occupants are eligible under section 202;

(4) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the elderly, families or minority groups;

(5) There is reasonable expectation that the Sponsor can meet the Minimum

Capital Investment requirement and start-up expenses;

(6) Sponsor provided evidence of legally-binding site control;

(7) Sponsor is in compliance with civil rights laws and regulations;

(8) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority elderly concentration considerations, and is not in a floodway;

(9) There is sufficient market demand for the number of units proposed based on preliminary review; and

(10) Application was responsive to the Field Office Invitation (*i.e.*, did not request more units than advertised);

(b) *Action on applications found to be incomplete.* If an Application is determined to be incomplete, the Sponsor shall be advised in writing of any deficiencies or any inconsistencies. The missing information is to be submitted generally within 14 calendar days from the date of HUD's written notification. It is not additional time to complete or amend the application to overcome any defects in the original submission. An application with two or more complete exhibits missing is to be rejected, except that an application missing certifications will not be rejected, provided they are executed before the application submission deadline and submitted within the 14-day period.

(c) *Technical processing.* When an Application is determined to be complete and responsive to the Invitation, technical processing, consisting of the following, shall be accomplished:

(1) The Field Office will evaluate the application to determine its eligibility and acceptability based on the selection criteria in paragraph (d) of this section.

(2) If, in its evaluation of all pertinent factors, the Field Office determines that the application is rejected on any technical grounds, it shall notify the Sponsor in writing that they have generally 14 calendar days from the date of the notification letter to appeal the technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

(3)(i) Before project selection, the Field Office shall complete an environmental review in compliance with the National Environmental Policy Act of 1969 and the related authorities in 24 CFR part 50.

(ii) No financial assistance shall be approved for construction or rehabilitation of a structure or portion of a structure or acquisition from the Resolution Trust Corporation of a structure located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(A)(*1*) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations thereunder (44 CFR parts 59 through 79), or

(*2*) Less than a year has passed since FEMA notification regarding such hazards, and

(B) Flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(iii) Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve Applications for properties in the Coastal Barrier Resources System.

(4) Based on the factors set forth in this paragraph (c), the field office shall determine the Applications which, in its judgment, are approvable. Selections then shall be made in accordance with paragraph (e) of this section.

(d) *Selection criteria.* The selection criteria for assistance include:

(1) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis:

(i) The scope, extent and quality of the Sponsor's experience in providing housing or related services to the persons proposed to be served by the project;

(ii) The scope, extent and quality of the Sponsor's experience in providing housing or related services to minority persons or families and opportunities for minority and women-owned business enterprises participation; and

(iii) The extent of local community support for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds for its efforts;

(2) The Sponsor's financial capacity:

(i) The Sponsor's financial history and the current financial outlook;

(ii) The Sponsor's ability and willingness to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment; and

(iii) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor.

(**Note:** Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to Invitations issued under this part or part 890);

(3) The need for supportive housing for the elderly in the area to be served and the desirability of the proposed site:

(i) Extent to which the Sponsor demonstrates the need for supportive housing for the elderly;

(ii) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, and other necessary services to the intended occupants and freedom of the site from adverse environmental conditions;

(iii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families; and

(iv) Reasonableness of the estimated site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets;

(4) The design of the project:

(i) The extent to which the proposed design will meet the special physical needs of elderly persons;

(ii) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion; and

(iii) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve; and

(5) The provision of supportive services:

(i) The extent to which the proposed supportive services meet the identified needs of the residents; and

(ii) The extent to which the Sponsor has demonstrated that the identified supportive services will be provided on a consistent long-term basis.

(e) The Field Office shall rate each Application on the basis of its assessment of the Sponsor's Application using the selection criteria set forth on the NOFA. The Field Office shall also calculate the capital advance and PRAC amounts to be reserved for each project. The Regional Office shall identify for selection the highest ranking Applications in descending order which most reasonably approximate the estimated maximum number of units which can be funded in each Field Office by metropolitan/nonmetropolitan jurisdictions, under the allocation of fund authority.

(f) Unused funds within a competitive area, if available fund authority exceeds selections, may be reallocated by

combining metropolitan and nonmetropolitan funds in order to fund another project in either category. If there are excess funds which are not allocable to any application within the original competitive area, the funds may be reallocated from one competitive area to another within the same State. If there are excess funds which are not allocable in the above methods, the funds may be reallocated from one competitive area to another within the Region. When the Regional Office aggregates residual funds from the competitive areas, the original metro/nonmetro breakdown must be retained initially to determine whether there are any approvable applications in either category prior to making any transfers of funds. Remaining unused funds must be returned to Headquarters.

§ 889.305 Approval of applications.

(a) A Sponsor whose Application is approved shall be issued a notice of section 202 Fund Reservation in a format prescribed by the Assistant Secretary, specifying:

(1) The amount of the section 202 Fund Reservation, the number and mix of units, and the location of the proposed project.

(2) The amount of project rental assistance contract and budget authority reserved for the project.

(3) A date by which the Sponsor is required to sign and return a copy of the notification (indicating it will file a request for conditional commitment).

(b) If the Sponsor does not sign and return a copy of the notification (indicating it will file a request for conditional commitment) by the date specified, the field office may notify the Sponsor that its previous approval of the Sponsor's Application is withdrawn;

(c) No part of the funds reserved may be transferred by the Sponsor, except to the Owner, caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a conditional commitment.

(d) Subject to the availability of funds, and in accordance with the HUD-approved capital advance amount, the Field Office Director may amend the amount of a fund reservation approved pursuant to paragraph (b) of this section at any time before the final closing.

§ 889.310 Duration of fund reservations.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance under § 889.305:

(1) Subject to the approval of the Assistant Secretary, the Field Office may, at any time, issue a notice of intent to cancel the fund reservation if the field office determines that the Owner is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition from the Resolution Trust Corporation.

(2) Subject to the approval of the Assistant Secretary, the Field Office shall issue a notice of intent to cancel the fund reservation if the construction, rehabilitation, or acquisition of Resolution Trust Corporation properties of a project is not begun within 18 months after the notice of section 202 fund reservation under § 889.305 is issued or, if applicable, within an extension of the 18-month period granted under paragraph (a)(3) of this section.

(3) The Field Office may extend the period specified in paragraph (a)(2) of this section up to 24 months after the notice of section 202 fund reservation is issued, if HUD determines that the Owner is making satisfactory progress toward the start of construction, rehabilitation, or acquisition of Resolution Trust Corporation properties. The Regional Office may grant additional extensions of up to 36 months after the notice of section 202 fund reservation is issued, if—

(i) The delay has been for reasons beyond the Owner's control;

(ii) The Owner has done everything within its power to resolve the problems causing the delay;

(iii) All major problems have been resolved, or there is good reason to expect prompt resolution; and

(iv) There is good reason to expect the start of construction, rehabilitation, or acquisition of Resolution Trust Corporation properties to begin within the extension period.

(b) *Notification procedures.* (1) If HUD determines that a fund reservation must be cancelled under paragraph (a) of this section, the Field Office shall mail a notice of cancellation to the Owner by certified mail, return receipt requested. The notice of cancellation must:

(i) Describe the reasons for the cancellation of the fund authority; and

(ii) Advise the Owner that it may file an appeal of the cancellation with the Field Office within 30 days of the receipt of the cancellation notice, and that the failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

(2) If the Owner fails to file an appeal of the fund cancellation within 30 days from the date of cancellation notice, the field office shall cancel the fund reservation and provide a written notice of the cancellation to the Owner.

(3) If the Owner files an appeal within 30 days of the date of the cancellation notice, HUD Headquarters will review the appeal and will issue a decision on the appeal within 45 days of the receipt of the appeal. HUD will approve the appeal if the Owner demonstrates that it is making satisfactory progress toward the start of construction, rehabiliation, or acquisition of Resolution Trust Corporation properties.

(i) If HUD approves the appeal, it shall provide a written notification of the approval to the Owner. The notification shall indicate the duration of the extended fund reservation.

(ii) If HUD disapproves the appeal, it shall notify the Owner in writing of the determination, and cancel the fund reservation.

Subpart D—Capital Advance

§ 889.400 Repayment of capital advance.

(a) Interest prohibition and repayment. A capital advance provided under this part shall bear no interest and its repayment shall not be required so long as the housing remains available for very-low-income elderly persons in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a declaration of trust, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any section 202 project is prohibited, unless the Assistant Secretary gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer is a part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income persons on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

Subpart E—Project Rental Assistance Contracts [Reserved]

Subpart F—Project Management [Reserved]

Subpart G—Technical Assistance

§ 889.700 Technical assistance.

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under this part.

Dated: May 31, 1991.

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-13635 Filed 6-11-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-91-3231; FR-2986-N-01]

Fund Availability (NOFA) for Supportive Housing for the Elderly

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.
ACTION: Notice of fund availability for FY 91.

SUMMARY: This NOFA announces HUD's funding for supportive housing for the elderly. In the body of this document is information concerning the following: (a) The purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria and (b) application processing, including how to apply and how selections will be made. A checklist of steps and exhibits involved in the application process will be included in the application package which can be obtained from the appropriate Field Office identified in appendix A.

DATES: The deadline date for receipt of applications in response to this NOFA is August 12, 1991.

ADDRESSES: Applications must be delivered to the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers where available) are attached as appendix A to this NOFA. HUD will date-stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this NOFA are 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, *Findings and Certifications.* 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: HUD Desk Officer, room 3001, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

Section 801 of the National Affordable Housing Act (the NAH Act) amended section 202 of the Housing Act of 1959. It authorizes the Secretary to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 889 also published elsewhere in today's **Federal Register.** This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly in accordance with the Interim Rule.

For supportive housing for the elderly, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991 (Pub. L. 101-507), approved November 5, 1990 (Fiscal Year 1991 Appropriations Act) provides $550,115,000 for capital advances under section 202 of the Housing Act of 1959 (as amended by section 801 of the NAH Act), and $263,619,000 for project rental assistance. Of these amounts, up to $5,000,000 shall be available for contracts for technical assistance in accordance with section 202(k)(1) (as amended by section 801 of the NAH Act). The capital advance allocation amounts set forth in section B. below are those available after amounts have been set aside for amendments to prior year fund reservations and for technical assistance.

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). The Supportive Housing for the Elderly interim rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest is a new statutory requirement for a certification by the appropriate State or local agency (typically the Area Agency on Aging) that the services identified in the application are well designed for the category or categories of elderly persons the housing is intended to serve. Therefore, the Sponsor must develop and submit its service plan to the appropriate agency to obtain the required certification. In view of the short time frame in this fiscal year for submission of applications to HUD, this certification will be accepted even if not signed and submitted to the Field Office by the application deadline date, if it is received by the Field Office within 30 days following the application deadline date.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for the elderly, less any amounts made available for amendments of fund reservations made in prior years and set aside for technical assistance. The Department reserves rental assistance funds sufficient for 20-year contracts in support of the units selected for capital advances, consistent with current operating cost standards.

The allocation formula for section 202 funds consists of the following two data elements:

1. A measure of the total number of elderly renter households.

2. A measure of the number of one- and two-person elderly renter households with incomes at or below the very low income standard with housing deficiencies, consisting primarily of households paying more than 30 percent of their incomes for rent.

Based on this formula, the Department has allocated the available capital advance funds as shown on the following chart:

FISCAL YEAR 1991 ALLOCATIONS FOR SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY

Field offices	Metropolitan		Nonmetropolitan		Totals	
	Capital advance	Units	Capital advance	Units	Capital advance	Units
Region I						
Boston	$22,920,000	306	$2,942,000	39	$25,862,000	345
Hartford	9,857,000	131	0	0	9,857,000	131
Manchester (ME, NH, VT)	2,471,000	44	5,601,000	99	8,072,000	143
Providence	3,546,000	49	0	0	3,546,000	49
Total I	38,794,000	530	8,543,000	138	47,337,000	668
Region II						
Buffalo	9,549,000	164	3,769,000	65	13,318,000	229
New York	63,124,000	778	0	0	63,124,000	778
Newark	25,632,000	345	0	0	25,632,000	345
Total II	98,305,000	1,287	3,769,000	65	102,074,000	1,352
Region III						
Baltimore	6,835,000	116	0	0	6,835,000	116
Charleston	0	0	3,765,000	74	3,765,000	74
Philadelphia (DE)	17,297,000	263	3,256,000	49	20,553,000	312
Pittsburgh	7,746,000	143	3,109,000	57	10,855,000	200
Richmond	3,580,000	72	3,518,000	71	7,098,000	143
D.C. (MD & VA)	6,983,000	110	0	0	6,983,000	110
Total III	42,441,000	704	13,648,000	251	56,089,000	955
Region IV						
Atlanta	5,511,000	120	5,541,000	120	11,052,000	240
Birmingham	3,463,000	76	3,523,000	77	6,986,000	153
Columbia	2,581,000	58	3,394,000	76	5,975,000	134
Greensboro	4,161,000	82	7,189,000	142	11,350,000	224
Jackson	0	0	5,437,000	122	5,437,000	122
Jacksonville	22,046,000	480	2,614,000	57	24,660,000	537
Louisville	2,739,000	56	4,711,000	96	7,450,000	152
Knoxville	2,778,000	62	0	0	2,778,000	62
Nashville	2,549,000	58	2,380,000	54	4,929,000	112
Caribbean	2,092,000	40	2,182,000	42	4,274,000	82
Total IV	47,920,000	1,032	36,971,000	786	84,891,000	1,818
Region V						
Chicago	25,741,000	432	6,135,000	101	31,876,000	524
Cincinnati	4,576,000	89	0	0	4,576,000	89
Cleveland	8,491,000	148	2,121,000	37	10,612,000	185
Columbus	2,797,000	55	2,339,000	46	5,136,000	101
Detroit	9,819,000	169	0	0	9,819,000	169
Grand Rapids	2,001,000	40	2,062,000	43	4,063,000	83
Indianapolis	5,100,000	98	3,360,000	65	8,460,000	163
Milwaukee	6,166,000	112	4,066,000	74	10,232,000	186
Minn-St. Paul	4,605,000	79	3,708,000	64	8,313,000	143
Total V	69,296,000	1,213	23,791,000	430	93,087,000	1,643
Region VI						
Fort Worth (NM)	6,472,200	138	3,952,800	84	10,425,000	222
Houston	3,144,900	64	1,828,100	41	4,973,000	105
Little Rock	1,709,600	41	3,993,400	96	5,703,000	137
New Orleans	3,101,000	67	2,373,000	52	5,474,000	119
Oklahoma City	1,787,000	40	2,675,000	60	4,462,000	100
San Antonio	3,130,000	71	1,600,000	36	4,730,000	107
Total VI	19,344,700	421	16,422,300	369	35,767,000	790
Region VII						
Des Moines	2,510,400	54	3,542,600	76	6,053,000	130
Kansas City	3,990,400	82	3,372,600	69	7,363,000	151
Omaha	1,890,800	41	1,014,200	22	2,905,000	63
St. Louis	4,583,800	82	2,284,200	41	6,868,000	123
Total VII	12,975,400	259	10,213,600	208	23,189,000	467
Region VIII						
Denver (ND, SD, MT, WY, UT)	5,672,000	121	5,791,000	123	11,463,000	244
Total VIII	5,672,000	121	5,791,000	123	11,463,000	244
Region IX						
Honolulu (Guam)	3,113,000	40	0	0	3,113,000	40
Los Angeles	46,572,000	697	0	0	46,572,000	697

FISCAL YEAR 1991 ALLOCATIONS FOR SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY—Continued

Field offices	Metropolitan		Nonmetropolitan	Units	Totals	
	Capital advance	Units	Capital advance		Capital advance	Units
Phoenix	3,755,000	79	1,285,000	27	5,040,000	106
Sacramento	4,815,000	83	0	0	4,815,000	83
San Francisco	22,435,000	297	0	0	22,435,000	297
Total IX	80,690,000	1,196	1,285,000	27	81,975,000	1,223
Region X						
Anchorage	0	0	1,562,000	20	1,562,000	20
Portland (ID)	2,048,000	40	2,972,400	58	5,020,400	98
Seattle	4,806,800	80	1,853,800	31	6,660,600	111
Total X	6,854,800	141	6,388,200	96	13,243,000	237
National Total	422,330,800	6,887	126,784,200	2,502	549,115,000	9,389

These allocations are the maximum amounts that may be reserved. The Department notes that, based upon preliminary estimates of the annual per-unit operating expenses, insufficient Project Rental Assistance funds were appropriated to fund rental assistance contracts for the maximum number of units set forth above. It is, therefore, possible that as few as 5,000 to 6,000 units can be funded under this NOFA, although capital advance authority is sufficient to cover about 9,400 units. As provided in Fiscal Year 1991 Appropriations Act, any excess capital advance funds will be used for grants for retrofitting housing for the elderly in accordance with section 802 of the NAH Act. Any funds available for that purpose will be announced in a NOFA.

If efforts to secure additional funds to make up this short-fall are not successful, making it necessary to fund fewer than 9,400 units, the Department will adjust the Fair Share allocations published here proportionately, will amend the allocations to reflect Regional rather than Field Office distribution, and will move the area of competition from the Field Offices to the Regional Offices. In the event of a reduction, the Regional Offices will receive the following percentages of available funds:

Region I	8.6
Region II	18.6
Region III	10.2
Region IV	15.5
Region V	17.0
Region VI	6.5
Region VII	4.2
Region VIII	2.1
Region IX	14.9
Region X	2.4

C. Eligibility

The only eligible applicants under this program are private, nonprofit organizations and nonprofit consumer cooperatives. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. No organization shall participate as Sponsor or Co-sponsor in the filing of application(s) for fund reservation in a single region in this fiscal year in excess of that necessary to finance the construction, rehabilitation or acquisition from RTC of 300 units of housing and related facilities for the elderly. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or non-affiliated entities. No single application may propose more than the number of units advertised by a Field Office or 125 units whichever is less. In addition, the national limit for any one applicant is 10 percent of the total units allocated in all Regions. Affiliated entities which submit separate applications shall be deemed to be a single entity for the purposes of these limits.

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 202 Fund Reservations for housing for the elderly that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing:

(a) Application was received by HUD at the appropriate address by August 12, 1991 and was complete or is missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification letter;

(c) Sponsor, proposed facilities and proposed occupants are eligible under section 202;

(d) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the elderly, families or minority groups;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Sponsor provided evidence of legally-binding site control;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(i) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(ii) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of noncompliance;

(iii) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57);

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority elderly concentration considerations, and is not in a floodway or Coastal High Hazard Area;

(i) There is sufficient market demand for the number of units proposed based on preliminary review; and

(j) Application was responsive to the Field Office Invitation (*i.e.*, did not request more units than advertised).

2. Selection Criteria

Applications for section 202 fund reservations that successfully pass preliminary evaluation and technical processing will be rated using the following selection criteria:

(a) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis (20 points):

(i) The scope, extent and quality of the Sponsor's experience in providing housing or related services to the persons proposed to be served by the project (10 points);

(ii) The scope, extent and quality of the Sponsor's experience in providing housing or related services to minority persons or families and opportunities for minority and women-owned business enterprises participation (5 points); and

(iii) The extent of local community support for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds for its efforts (5 points);

(b) The Sponsor's financial capacity (25 points):

(i) The Sponsor's financial history and the current financial outlook (5 points);

(ii) The Sponsor's ability and willingness to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment (10 points); and

(iii) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor (NOTE: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to Invitations under this NOFA, the NOFA for Supportive Housing for Persons with Disabilities (published elsewhere in today's Federal Register) or other Invitations under part 889 or part 890) (10 points);

(c) The need for supportive housing for the elderly in the area to be served and the desirability of the proposed site (20 points):

(i) Extent to which the Sponsor demonstrates the need for supportive housing for the elderly (10 points);

(ii) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, and other necessary services to the intended occupants and freedom of the site from adverse environmental conditions (4 points);

(iii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families (3 points);

(iv) Reasonableness of the estimated site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets (3 points);

(d) The design of the project (15 points):

(i) The extent to which the proposed design will meet the special physical needs of elderly persons (5 points);

(ii) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (5 points); and

(iii) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve (5 points); and

(e) The provision of supportive services (20 points):

(i) The extent to which the proposed supportive services meet the identified needs of the residents (10 points); and

(ii) The extent to which the Sponsor has demonstrated that the identified supportive services will be provided on a consistent long-term basis (10 points).

II. Application Process

All applications for section 202 Fund Reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office receiving an allocation and must contain all exhibits required by this Notice.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for elderly households.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 889.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on August 12, 1991, unless that time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Application submitted by facsimile are not acceptable.

Organizations interested in applying for a section 202 Fund Reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the Section 202 Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 202 eligible Owners to cover certain start-up expenses. Section 106(b) applications should be submitted simultaneously with the section 202 application. HUD will consider section 106(b) applications with the section 202 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost standards and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning and housing costs will be addressed.

III. Application Submission Requirements

1. Application

Each application shall include all of the information, materials, forms, and exhibits listed in paragraph 2 of this

section and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 202 capital advance funds on the information provided in the application.

In preparing applications, applicants will be able to utilize information and exhibits previously prepared for prior Section 202 applications or for applications for other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include among others those on previous participation in the section 202 program; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

2. Application Contents

(a) Each applicant (Sponsor) shall include on a Form HUD–92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by size (efficiency (415 sq. ft.), one-bedroom (540 sq. ft.) or two-bedroom (800 sq. ft.));

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and types of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation or acquisition from the RTC).

(b) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract (Form HUD 92531A–EH) and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(i) Articles of Incorporation, constitution, or other organizational documents;

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) Will form an Owner (as defined in § 889.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 889.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and support from local community groups.

(5) Evidence of any previous participation in HUD programs by the Sponsor, its officers or directors, on Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) Any other rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/or medical facilities to the elderly and/or families; and

(ii) The Sponsor's experience in providing housing, medical facilities and/or related services to minority persons or families and in contracting with minority- and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving the elderly and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations under this NOFA, the NOFA for Supportive Housing for Persons with Disabilities (published elsewhere in today's **Federal Register**) or other Invitations under part 889 or part 890. Indicate by Field Office, the proposed location by city and State, and the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD–92290) for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advances under § 889.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417 and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number,

Field Office, funding year and month and year of initial closing, current status (if finally closed, indicate month and year) and financial requirements for closing.

(13) The following additional information with respect to the proposed project:

(i) A description of the category or categories of elderly persons the housing is intended to serve and the need for supportive housing for that population in the area to be served.

(ii) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of section 202 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants.

(Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 202 project or from any other development team member.)

(iii) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(iv) A sketch of the site plan showing the general development of the site including the proposed location of the proposed building(s), streets, parking areas and drives, service areas, and unusual site features.

(v) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(14) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services; and (c) identifies the staff organization that will carry out the relocation activities.

(Note: IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 202 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. DUE TO POTENTIALLY HIGH RELOCATION COSTS, SPONSORS ARE ENCOURAGED TO UTILIZE SITES WHICH INVOLVE MINIMAL OR NO RELOCATION COSTS.)

(15) A narrative description of the proposed housing consistent with § 889.270(c), including:

(i) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(ii) Identification and description of all community spaces, special amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these amenities, features, or community spaces would not comply with the design and cost standards, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, features or amenities.

(16) Typical unit plans and floor plans of all floors providing community space, indicating dimensions of spaces to be used for the provision of supportive services.

(18) Identify on a Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly, all supportive services, if any, to be provided to the persons occupying such housing; and describe (a) the manner in which such services will be provided to such persons (*i.e.*, on or offsite), including, whether a service coordinator will facilitate the adequate provision of such services, and (b) the public or private sources of assistance that may reasonably be expected to fund or provide such services.

(18) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(19) A certification from the appropriate State or local agency that the provision of services identified in the application is well designed to serve the special needs of the category or categories of elderly persons the housing is intended to serve.

(20) A certification of the Sponsor(s) that the appropriate State agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 202 Program is covered under the State review process and, if applicable, the date the application was submitted to the State.

(21) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(22) A certification by the Sponsor(s) that the section 202 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(23) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(24) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(25) A certification by the Sponsor(s) that it will comply (or has complied)

with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 889.265(e).

IV. Corrections to Deficient Applications

A. Preliminary Evaluation

During preliminary evaluation, Sponsors will be provided 14 calendar days from the date of HUD's written notification to cure technical deficiencies in their applications. However, it is not additional time to amend the application to overcome any defects in the original submission. Technical deficiencies are inadvertently omitted documents which have been executed prior to the application deadline date (such as certifications or articles of incorporation) or clarifications of previously submitted material and are not of such a nature as to improve the competitive position of the application.

Technical deficiencies do not include items which would be considered substantive defects in the original submission. For example, if a Board resolution is missing from the original submission, but it is submitted during the 14-day period, it must have been executed prior to the deadline date for receipt of applications. If it is not submitted during the 14-day period or it is submitted during this time but executed after the deadline date for receipt of applications, it is a substantive defect and the application will be rejected. Sponsors of applications that are missing two or more exhibits will not be afforded an opportunity to submit the missing exhibits and will receive written notification that their applications have been rejected. However, exhibits which are certifications are not counted as missing exhibits in this determination.

Applicants whose applications are found unacceptable during the preliminary evaluation process due to substantive defects and applications which fail to adequately respond to HUD's deficiency letter within the 14-day period, will be notified that their applications are not eligible for further processing, and are rejected.

B. Technical Processing

Applications which are found acceptable during the preliminary evaluation process, or an acceptable response to HUD's deficiency letter was received within the 14-day period, will undergo a more thorough analysis. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR Part 50. Examples of reasons for technical processing rejection include an unacceptable site based upon a site visit or based on a review of the detailed financial information, the Sponsor(s)' lack of sufficient financial resources. The Secretary will not reject an application based on technical processing without giving notice of that rejection and the basis therefor to the applicant and affording the applicant an opportunity to respond. An applicant will be afforded 10 calendar days from the date of HUD's written notice to appeal a technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 889.300(d) (also above in I.D.2). Applications which have a total score of 50 points or more will be eligible for selection and will be placed in rank order.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, 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 does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for supportive housing for the elderly.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. HUD Reform Act

Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531) (the Reform Act), which requires the Secretary to certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of other assistance specified in section 102(b)(1) of the Reform Act, and which also requires the Secretary to adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as appropriate for any changes reported under section 102(c) of the Reform Act, would apply to section 202 capital advances. These requirements will become effective after the Department publishes a final rule to implement the Reform Act.

E. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 31, 1991.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix A—HUD Field Offices

Region I

Boston, Massachusetts Regional Office (Jurisdiction: Massachusetts)

John Mastropietro
Regional Administrator—Regional Housing Commissioner
HUD—Boston Regional Office
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room 375
Boston, Massachusetts 02222–1092
(617) 565–5234
(TDD) (617) 565–5453

Hartford, Connecticut Office (Jurisdiction: Connecticut)

William Hernandez, Jr.
Manager
HUD—Hartford Office
330 Main Street
Hartford, Connecticut 06106–1860
(203) 240–4523
(TDD) (203) 240–4522

Manchester, New Hampshire Office (Jurisdiction: New Hampshire)

James Barry, Manager
HUD—Manchester Office

Norris Cotton Federal Building
275 Chestnut Street
Manchester, New Hampshire 03101–2487
(603) 666–7681
(TDD) (603) 666–7518

Providence, Rhode Island Office (Jurisdiction: Rhode Island)

Casimir J. Kolaski, Jr.
Manager
HUD—Providence Office
330 John O. Pastore Federal Building and U.S. Post Office—Kennedy Plaza
Providence, Rhode Island 02903–1745
(401) 528–5351
(TDD) (401) 528–5364

Region II

New York Regional Office (Jurisdiction: New York)

Dr. Anthony Villane
Regional Administrator—Regional Housing Commissioner
HUD—New York Regional Office
26 Federal Plaza
New York, New York 10278–0068
(212) 264–8068
(TDD) (212) 264–0927

Buffalo, New York Office (Jurisdiction: New York)

Joseph Lynch
Manager
HUD—Buffalo Office
Lafayette Court, 5th Floor
465 Main Street
Buffalo, New York 14203–1780
(716) 846–5755
(TDD) (716) 846–5787

Newark, New Jersey Office (Jurisdiction: New Jersey)

Theodore Britton, Jr.
Manager
HUD—Newark Office
Military Park Building
60 Park Place
Newark, New Jersey 07102–5504
(201) 877–1662
(TDD) (201) 877–6649

Region III

Philadelphia, Pennsylvania Regional Office (Jurisdiction: Pennsylvania)

Harry Staller
Deputy Regional Administrator
HUD—Philadelphia Regional Office
Liberty Square Building
105 South 7th Street
Philadelphia, Pennsylvania 19106–3392
(215) 597–2560
(TDD) (215) 597–5564

Washington, DC Office—(Category A) (Jurisdiction: District of Columbia)

I. Toni Thomas
Manager
HUD—Washington, DC Office
Union Center Plaza, Phase II
820 First Street, NE., Suite 300
Washington, DC 20002–4205
(202) 275–9200
(TDD) (202) 275–0967

Baltimore, Maryland Office (Jurisdiction: Maryland)

Maxine Saunders
Manager
HUD—Baltimore Office
10 North Calvert Street, 3rd Floor
Baltimore, Maryland 21202–1865
(301) 962–2121
(TDD) (301) 962–0106

Pittsburgh, Pennsylvania Office (Jurisdiction: Pennsylvania)

Choice Edwards
Manager
HUD—Pittsburgh Office
412 Old Post Office Courthouse Bldg.
7th Ave. & Grant St.
Pittsburgh, PA 15219–1906
(412) 644–6428
(TDD) (412) 644–5747

Richmond, Virginia Office (Jurisdiction: Virginia)

Mary Ann Wilson
Manager
HUD—Richmond Office
400 North 8th Street
Richmond, Virginia 23240
(804) 771–2721
(TDD) (804) 771–2820

Charleston, West Virginia Office (Jurisdiction: West Virginia)

Michael Kulick
Manager
HUD—Charleston Office
405 Capitol Street
Suite 708
Charleston, West Virginia 25301–1795
(304) 347–7000
(TDD) (304) 347–7044

Region IV

Atlanta, Georgia Regional Office (Jurisdiction: Georgia)

Raymond A. Harris
Regional Administrator—Regional Housing Commissioner
HUD—Atlanta Regional Office
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303–3388
(404) 331–5136
(TDD) (404) 730–2654

Birmingham, Alabama Office (Jurisdiction: Alabama)

Robert E. Lunsford
Manager
HUD—Birmingham Office
600 Beacon Parkway West, Suite 300
Birmingham, Alabama 35209–3144
(205) 731–1617
(TDD) (205) 731–1617

Louisville, Kentucky Office (Jurisdiction: Kentucky)

Verna V. Van Ness
Acting Manager
HUD—Louisville Office
601 West Broadway
Post Office Box 1044
Louisville, Kentucky 40201–1044
(502) 582–5251
(TDD) (502) 582–5139

Jackson Mississippi (Jurisdiction: Mississippi)

Sandra Freeman
Manager
HUD—Jackson Office
Dr. A.H. McCoy Federal Building
100 W. Capitol Street, Room 910
Jackson, Mississippi 39269–1096
(601) 965–4702
(TDD) (601) 965–4171

Greensboro, North Carolina (Jurisdiction: North Carolina)

Larry J. Parker
Manager
HUD—Greensboro Office
415 North Edgeworth Street
Greensboro, North Carolina 27401–2107
(919) 333–5363
(TDD) (919) 333–5518

Caribbean Office (Jurisdiction: Puerto Rico)

Rosa Villalonga
Acting Manager
HUD—Caribbean Office
San Juan Center
159 Carlos E. Chardon Avenue
San Juan, Puerto Rico 00918–1804
(809) 766–5201

Columbia, South Carolina Office (Jurisdiction: South Carolina)

Ted B. Freeman
Manager
HUD—Columbia Office
Strom Thurmond Federal Building
1835–45 Assembly Street
Columbia, South Carolina 29201–2480
(803) 765–5592

Knoxville, Tennessee Office (Jurisdiction: Tennessee)

Richard B. Barnwell
Manager
HUD—Knoxville Office
John J. Duncan Federal Bldg.
710 Locust Street, S.W.
Knoxville, Tennessee 37902–2526
(615) 549–9384
(TDD) (615) 549–9372

Nashville, Tennessee Office (Jurisdiction: Tennessee)

John H. Fisher
Manager
HUD—Nashville Office
251 Cumberland Bend Drive, Suite 200
Nashville, Tennessee 37228–1803
(615) 736–5213

Jacksonville, Florida Office (Jurisdiction: Florida)

James T. Chaplin
Manager
HUD—Jacksonville Office
325 West Adams Street
Jacksonville, Florida 32202–4303
(904) 791–2626
(TDD) (904) 791–1241

Region V

Chicago, Illinois Regional Office (Jurisdiction: Illinois)

Gertrude Jordan
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Detroit, Michigan Office Jurisdiction: Michigan)

Harry I. Sharrott
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Patrick V. McNamara Federal Building
477 Michigan Avenue
Detroit, Michigan 48226–2592
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Indianapolis, Indiana Office (Jurisdiction: Indiana)

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Indianapolis, Indiana 46204–2526
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Grand Rapids, Michigan Office (Jurisdiction: Michigan)

Ronald C. Weston
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Minneapolis-St. Paul, Minnesota (Jurisdiction: Minnesota)

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Columbus, Ohio Office (Jurisdiction: Ohio)

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Region VI

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Region VII

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Region VIII

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Region IX

San Francisco, California Regional Office (Jurisdiction: California)

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[FR Doc. 91–13636 Filed 6–11–91; 8:45 am]

BILLING CODE 4210–27–M

federal register

Wednesday
June 12, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

Supportive Housing for Persons With Disabilities—Set-aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus; Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Docket No. N-91-3267; FR-3068-N-01]

Notice of Fund Availability (NOFA) for Supportive Housing for Persons With Disabilities—Set-aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for FY91.

SUMMARY: This NOFA announces the set-aside established in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991 (Pub. L. 101–507, approved November 5, 1990 (HUD's Fiscal Year 1991 Appropriations Act) for supportive housing for persons disabled as a result of infection with the Human Acquired Immunodeficiency Virus (HIV). In the body of this document is information concerning the following: (a) The purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria and (b) application processing, including how to apply and how selections will be made, where that information differs from the Supportive Housing for Persons with Disabilities Program as announced in a NOFA published elsewhere in this issue. A checklist of steps and exhibits involved in the application process will be included in the application package which can be obtained from the appropriate Field Office identified in Appendix A.

DATES: The deadline date for receipt of applications in response to this NOFA is August 12, 1991.

ADDRESSES: Applications must be delivered to the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers where available) are attached as appendix A to this NOFA. HUD will date-stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this NOFA are 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, Findings and Certifications. 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: HUD Desk Officer, room 3001, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

HUD's Fiscal Year 1991 Appropriations Act established a set-aside of 500 units for persons disabled as a result of infection with HIV from the amounts appropriated under section 811 of the National Affordable Housing Act (the NAH Act), which authorizes a new supportive housing program for persons with disabilities. This program replaces assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAH Act, to authorize supportive housing for the elderly). The purpose of section 811 is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. The Secretary is authorized to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 890 published elsewhere in this issue. This assistance may be used to finance the construction, rehabilitation or acquisition (group homes only), including acquisition of property from the Resolution Trust Corporation (RTC) (group homes and independent living facilities), to be used as supportive housing for persons with disabilities in accordance with the Interim Rule.

For supportive housing for persons with disabilities, HUD's Fiscal Year 1991 Appropriations Act provides $106,709,000 for capital advances under section 811, of which 500 units are required to be used for persons disabled as a result of infection with the HIV, and $104,000,000 for project rental assistance, including project rental assistance for 500 units of housing for persons disabled as a result of infection with the HIV. Of the amounts available, up to $5,000,000 shall be available for contracts for technical assistance in accordance with section 811(j)(1).

A NOFA was also published elsewhere in this issue for the Supportive Housing for Persons with Disabilities Program and it mentions that the set-aside for the 500 units of housing for persons disabled as a result of infection with the HIV would be the subject of a separate NOFA. This NOFA provides guidance regarding the set-aside (e.g., eligibility, submission requirements, available amounts, selection criteria and application processing). Successful recipients (Sponsors) of a section 811 capital advance under this NOFA will be nonprofit entities (with section 501(c)(3) tax exemption status) with experience as health care providers, or significant housing or supportive services experience, and which have a working or service agreement with a hospital. Otherwise, submission requirements and selection criteria for the Supportive Housing for Persons with Disabilities Program apply to this set-aside.

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). The Supportive Housing for Persons with Disabilities interim rule provides that

the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest, is a new statutory requirement for a certification by the appropriate state or local agency that the provision of services identified in the application is well designed to serve the needs of persons with disabilities. In order to fulfill this requirement, Sponsors must submit one copy of their application to the appropriate state or local agency identified by the Field Office in the application package simultaneously with their submission of their application to the appropriate Field Office. Also included with the application package will be a certification form that the Sponsor shall transmit to the state or local agency, along with its application, for the state or local agency to indicate that it has reviewed the supportive services plan and whether or not the provision of services is well designed to meet the needs of the proposed disabled population. Once the state or local agency completes its review of the supportive services plan, it must complete the certification form and forward it to the Field Office within 30 days of the Section 811 application deadline date. Unlike the Section 202 Program of Housing for Handicapped People where the appropriate state agency's review of the service plan description was optional, in the Section 811 program, the state or local agency's certification is required for approval of the Sponsor's application. Applications which do not contain such a certification will not be funded.

B. Allocation Amount

The allocation of capital advance authority for this set-aside is:

500 units..... $32,679,000.

C. Eligibility

The only eligible applicants under this program are private, nonprofit organizations. Neither a public body nor an instrumentality of a public body is eligible to participate in the program.

No more than 10 percent of the 500 units will be approved for any single Sponsor unless insufficient units can be funded by applying the 10 percent limit.

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 811 fund reservations for Supportive Housing for Persons with Disabilities—Set-Aside for Persons Disabled as a result of Infection with the HIV that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing (similar to section I.D.1., Preliminary Evaluation, in the Supportive Housing for Persons with Disabilities NOFA):

(a) Application was received by HUD at the appropriate address by August 12, 1991, and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification of deficiency letter;

(c) Sponsor, proposed facilities and proposed occupants (i.e., persons disabled as a result of infection with the HIV) are eligible under section 811;

(d) Sponsor is a private nonprofit entity (with 501(c)(3) tax exemption status) with experience as a health care provider or significant housing or supportive services experience related to the disabled, families or minority groups, and has a working or services agreement with a hospital;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Application contains evidence of control of a site or the appropriate identification of a site;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(1) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(2) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of non-compliance;

(3) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulation (24 CFR 8.57);

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority and disabled concentration considerations, and is not in a floodway or Coastal High Hazard Area;

(i) There is sufficient market demand for the number and type of units proposed based on preliminary review;

(j) Application included a supportive services plan meeting the requirements of § 890.265(c)(15); and

(k) Application was responsive to the Field Office Invitation.

2. Selection Criteria

Applications for section 811 fund reservations for this set-aside that successfully pass preliminary evaluation and technical processing will be rated using the following selection criteria (similar to Selection Criteria in section I.D.2., in the Supportive Housing for Persons with Disabilities NOFA):

(a) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis (20 points);

(1) The scope, extent and quality of the Sponsor's experience as a health care provider or significant housing or supportive services experience related to the disabled, families or minority groups (including providing housing or supportive services to the proposed disabled population), and the Sponsor has a working or services agreement with a hospital (10 points);

(2) The scope, extent and quality of the Sponsor's experience as a health care provider or significant housing or supportive services experience related to the disabled, families or minority groups, and the Sponsor has a working or services agreement with a hospital, and opportunities for minority and women-owned business enterprises participation (5 points); and

(3) The extent of local community support for the Sponsor and its activities, including experience in providing housing and/or supportive services in the area where the project is

to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds for its efforts (5 points);

(b) The Sponsor's financial capacity (25 points):

(1) The Sponsor's financial history and its current financial outlook (5 points);

(2) The Sponsor's ability and willingness to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment (10 points); and

(3) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor.

Note: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to Invitations under this NOFA, or under the published NOFA for Supportive Housing for the Elderly, or the NOFA for Supportive Housing for Persons with Disabilities published elsewhere in this issue (10 points).

(c) The need for supportive housing for persons with disabilities in the area to be served (10 points).

(d) The design of the project (10 points):

(1) The extent to which the proposed design of the housing will meet the special needs of persons with disabilities (4 points);

(2) The extent to which the proposed design of the housing will accommodate the provision of supportive services (that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of disabled persons the housing is intended to serve) (3 points); and

(3) the extent to which the proposed size and unit mix (if independent living facility) of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (3 points);

(e) The provision of supportive services (20 points):

(1) The extent to which the Sponsor has demonstrated that necessary supportive services will be provided on a consistent, long-term basis (10 points);

(2) The appropriateness of the supportive services to the needs of the proposed disabled population (5 points); and

(3) The quality of the service implementation plan (5 points);

(f) The extent to which the Sponsor has control of the site of the proposed housing (15 points):

(1) Applications with evidence of site control:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, job opportunities and other necessary services to the intended occupants (4 points);

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons/families (4 points);

(iii) Freedom of the site from adverse environmental conditions and overconcentration of disabled people (4 points);

(iv) Reasonableness of the site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets (3 points); or

(2) Applications with identification of site:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities and other necessary services to the intended occupants as well as freedom of overconcentration of disabled persons (5 points) ;

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons/families (5 points); and

(iii) The likelihood that site control will be obtained within six months of fund reservation, if approved (5 points).

II. Application Process

All applications for section 811 fund reservations under the set aside submitted by eligible Sponsors must be filed with the appropriate HUD Field Office and must contain all exhibits required by this NOFA.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development, health care and groups with special interest in housing for persons disabled as a result of infection with HIV.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 890.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on August 12, 1991, unless that time is extended by a Notice published in the **Federal Register.** Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Organizations interested in applying for a section 811 fund reservation under the set aside should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the Supportive Housing for Persons with Disabilities Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 811 eligible Owners to cover certain start-up expenses. Section 106(b) applications should be submitted simultaneously with the section 811 application. HUD will consider section 106(b) applications with the section 811 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, application packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, application packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost requirements and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, housing costs, and states' positions on funding supportive services to group home residents will be addressed.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in this section (same as the Supportive Housing for Persons with

Disabilities NOFA) and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 811 capital advance set aside funds on the information provided in the application.

In preparing applications, applicants will be able to utilize information and exhibits previously prepared for prior Section 202 applications or for applications for other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include among others those on previous participation in the section 202 program; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

1. Application Contents

(a) Each applicant (Sponsor) shall include on a Form HUD–92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by bedroom type (efficiency (415 sq. ft.), one-bedroom (540 sq. ft.) two-bedroom (800 sq. ft.), three-bedroom (1050 sq. ft.), four-bedroom (1150 sq. ft.) or if five or more bedrooms are provided, increase unit sizes by up to 100 sq. ft. for each additional bedroom) and the number of residents (if independent living facility) or the number of bedrooms and number of residents to be housed in each group home;

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and type of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation, or acquisition (group homes and RTC properties)).

(b) Additional exhibits must include:

(1) a Housing Consultant's Resume, Contract (Form HUD 92531A–EH), and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private nonprofit organization, including the following:

(i) Articles of incorporation, constitution, or other organizational documents:

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption (501(c)(3)) ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) will form an Owner (as defined in § 890.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 890.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and any statements of support for the project by members of the community in which the project is to be located and state and local organizations familiar with the needs of disabled individuals proposed to be housed.

(5) Evidence of previous participation in HUD programs, by the Sponsor, its officers or directors, on Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) The Sponsor's experience as a health care provider and its working or services agreements with a hospital;

(ii) Any other rental housing projects, medical and/or other facilities sponsored, owned or operated by the Sponsor, including a description of experience in providing housing, medical and/or other facilities to persons with disabilities and/or to families; and

(iii) The Sponsor's experience in providing housing, medical or other facilities and/or services to minority persons or families and in contracting with minority and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving disabled persons and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and ensure the provision of appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations under this NOFA, or under the NOFA for Supportive Housing for Persons with Disabilities, or the NOFA for Supportive Housing for the Elderly, both published elsewhere in this issue. Indicate by Field Office, the proposed location by city and state, the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD–92290) for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advance under § 890.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) a brief narrative description of financial history;

(ii) copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417, and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status, (if finally closed, indicate month and year), and financial requirements for closing.

(13) A narrative description of the proposed housing including:

(i) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding);

(A) If the Sponsor has control of the site, it must submit the following information:

(1) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notification of section 811 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and whether there are any restrictive covenants.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 811 project or from any other development team member.

(2) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated;

(3) Photographs of the site;

(4) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*);

(5) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

Note: IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 811 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. DUE TO POTENTIALLY HIGH RELOCATION COSTS, SPONSORS ARE ENCOURAGED TO UTILIZE SITES WHICH INVOLVE MINIMAL OR NO RELOCATION COSTS.

(6) An indication as to whether the Sponsor is willing to seek a different site if the preferred site is unapprovable, and if so, a reasonable assurance that site control will be obtained within 6 months of fund reservation.

(B) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(1) A description of the location of the site, neighborhood/community characteristics (to include racial and ethnic data) and amenities, and adjacent housing and/or facilities;

(2) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site, if approved for funding;

(3) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning; and

(4) A status of the sale of the site.

(5) An indication as to whether the site would involve relocation.

(ii) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(iii) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features.

(iv) A written description of the design of the proposed housing including any special design features and community space necessary to accommodate the physical needs of the proposed residents and the provision of supportive services. Included with the written description must also be a schematic drawing of each floor of the project noting the location of any special design features as well as a typical bedroom in a group home or a typical unit in an independent living facility with approximate dimensions, and community space for the provision of supportive services.

(v) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(a) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies;

(b) Written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Sponsor;

(c) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(d) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency and where the services are to be provided;

(e) Description of any special design features in the application that are not common to other section 811 group homes for the proposed population and the Sponsor's rationale for including them; and,

(f) Statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each weekday.

(14) A narrative description of the anticipated occupancy (i.e., persons disabled as a result of infection with the HIV).

Note: Persons disabled as a result of infection with the HIV are also eligible for occupancy in a project for the physically disabled, developmentally disabled or chronically mentally ill, depending upon the nature of the person's disability.

(15) A supportive services plan that includes:

(i) A detailed description of the housing intended to serve persons disabled as a result of infection with the HIV. Include how and from where persons will be referred and admitted to the project.

(ii) A detailed description of the needs of persons with disabilities that the housing is expected to serve.

(iii) A *detailed description of the supportive services* proposed to be provided to the anticipated occupancy, including:

(A) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

(B) The manner in which such services will be provided (i.e., how, when and how often, where (on/off-site), including assurances that the proposed residents will receive supportive services based on their individual needs.

(C) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(iv) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(v) A letter of intent from each agency that will provide the supportive services (if other than the Sponsor), indicating the source and extent of commitment to provide funding for the supportive services.

(vi) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category.

(16) Evidence demonstrating that there is effective demand for the proposed housing in the area to be served by the project and demonstrating that this demand is likely to continue throughout the life of the project.

(17) Signed certifications of the Sponsor(s)' intent to comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(18) A certification from the appropriate state or local agency that it has reviewed the supportive services plan in the Sponsor's application and that the provision of services identified in the application is well designed to serve the special needs of persons with disabilities to be served by the proposed project(s).

Note: The certification will not be included in the Sponsor's application submission to the Field Office. The state or local agency shall complete the certification found in the Sponsor's submission to the agency and forward it to the Field Office within 30 days of the application deadline date.

(19) A certification of the Sponsor(s) that the appropriate state agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 811 Program is covered under the state review process and, if applicable, the date the application was submitted to the State.

(20) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(21) A certification by the Sponsor(s) that the section 811 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(22) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(23) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(24) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24, and 24 CFR 890.260(e).

IV. Corrections to Deficient Applications

A. Preliminary Evaluation

During preliminary evaluation, Sponsors will be provided 14 calendar days from the date of HUD's written notification to cure technical deficiencies in their applications. However, it is not additional time to amend the application to overcome any defects in the original submission. Technical deficiencies are inadvertently omitted documents which have been executed prior to the application deadline date (such as certifications or articles of incorporation) or clarifications of previously submitted material and are not of such a nature as to improve the competitive position of the application.

Technical deficiencies do not include items which would be considered substantive defects in the original submission. For example, if a Board resolution is missing from the original submission, but it is submitted during the 14-day period, it must have been executed prior to the deadline date for receipt of applications. If it is not submitted during the 14-day period or it is submitted during this time but executed after the deadline date for receipt of applications, it is a substantive defect and the application will be rejected. Sponsors of applications that are missing two or more exhibits will not be afforded an opportunity to submit the missing exhibits and will receive written notification that their applications have been rejected. However, exhibits which are certifications are not counted as missing exhibits in this determination.

Applicants whose applications are found unacceptable during the preliminary evaluation process due to substantive defects and applications which fail to adequately respond to HUD's deficiency letter within the 14-day period, will be notified that their applications are not eligible for further processing, and are rejected.

B. Technical Processing

Applications which are found acceptable during the preliminary evaluation process, or an acceptable response to HUD's deficiency letter was received within the 14-day period, will undergo a more thorough analysis. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 for applications that submitted satisfactory evidence of site control. Examples of reasons for technical processing rejection include a lack of commitment to fund the necessary supportive services or, based on a review of the detailed financial information, the Sponsor(s)' lack of sufficient financial resources. The Secretary will not reject an application based on technical processing without giving notice of that rejection and the basis therefor to the applicant and affording the applicant an opportunity to respond. An applicant will be afforded 10 calendar days from the date of HUD's written notice to appeal a technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 890.300(c) (also mentioned above in I.D.2.). Applications which have a total score of 50 points or more will be eligible for selection and will be placed in rank order.

V. Additional Information

A. Project Size Limits

The following project size limits are applicable to supportive housing for persons with disabilities:

1. Group homes may house no more than eight (8) persons per home. On a case-by-case basis, however, HUD may approve a group home of up to 15 disabled people if the Sponsor can demonstrate the following:

(a) The increased number of people is necessary for the economic feasibility of the project;

(b) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(c) A project of the size proposed can be successfully integrated into the community; and

(d) A project of the size proposed is marketable in the community.

2. Independent living facilities may house no more than 24 disabled people, except for projects for the chronically mentally ill which may not exceed 20 such persons. On a case-by-case basis, HUD may approve an exception to the 24-person limit based upon the same criteria set forth in (1) above.

B. Procedures for Set-Aside Competition

HUD will hold this separate competition for applications proposing to serve persons disabled as a result of infection with the HIV only, simultaneously with the regular competition for section 811 capital advance funds. As noted, applications must be submitted to the local HUD field office, and should be identified on the application as intended for the set-aside. However, applications will be selected in rank order on a national basis since it is not feasible to allocate 500 units among smaller allocation areas. If there are not sufficient approvable applications to use the above described 500 units, HUD will make selections from the next approvable applications for any of the other disability categories in rank order.

For the purpose of eligibility in a section 811 project for persons disabled as the result of infection with the HIV (as in a section 811 project for persons with physical disabilities, developmental disabilities or chronic mental illness) a person infected with the HIV must meet the definition of one or more of the following: Physically disabled, developmentally disabled or chronic mental illness as found in the definition of person with disabilities (§ 890.105).

C. Sites

The National Affordable Housing Act requires Sponsors submitting applications for section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within 6 months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in § 890.265(c)(13)(i)(A). If it does not have site control, it must provide the information required in § 890.265(c)(13)(i)(B) as a reasonable assurance that site control will be obtained within 6 months of fund reservation notification. Sponsors that do not provide satisfactory evidence of site control or the proper identification of a site will be notified that their applications are rejected.

Sponsors may select a site different from the one(s) submitted in their original applications. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will compete against each other in Category A. Sponsors submitting proper identification of a site will compete against each other in Category B. HUD first shall select applications in the descending order of funding priority from Category A that most closely approximates the capital advance authority provided to the allocation area. If capital advance authority remains after selecting all approvable applications from Category A, HUD shall then select applications in the descending order of funding priority from Category B that most closely approximates the capital advance authority remaining in the allocation area.

Sponsors that submit evidence of site control where either the evidence or the site is not approvable will not have their applications rejected; their applications will compete in Category B, provided the application indicates their willingness to select another site and assurance that they will have site control within six months of fund reservation.

VI. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States

or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons disabled as a result of infection with the HIV.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. HUD Reform Act

Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531) (the Reform Act), which requires the Secretary to certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of other assistance specified in section 102(b)(1) of the Reform Act, and which also requires the Secretary to adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as appropriate for any changes reported under section 102(c) of the Reform Act, would apply to section 811 capital advances. These requirements will become effective after the Department publishes a final rule to implement the Reform Act.

E. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 5, 1991.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

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Seattle, Washington 98101–2058
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ANCHORAGE, ALASKA OFFICE (Jurisdiction: Alaska)

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Anchorage, Alaska 99513–7537
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[FR Doc. 91–13888 Filed 6–11–91; 8:45 am]

BILLING CODE 4210–27–M

federal register

Wednesday
June 12, 1991

Part V

Department of the Interior

Bureau of Indian Affairs

Salt River Indian Irrigation Project, AZ; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Salt River Indian Irrigation Project, AZ

AGENCY: Bureau of Indian Affairs, Department of Interior.

ACTION: General notice.

SUMMARY: The purpose of this general notice is to give the public notice of the current assessment rates for operating and maintaining the Salt River Indian Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water including pumped water and maintaining the facilities. Due to the delivery of irrigation water from several sources (normal flow water, spill water, storage water, pumped water and Central Arizona Project (CAP) water), it is necessary to structure the assessment rates to reflect cost of water delivered. The assessment rates for the Salt River Indian Irrigation Project consist of a per acre rate for delivery of the first 2 acre-feet of water, a rate for delivery of the next 1.25 acre-feet, delivery rate for additional water above 3.25 acre-feet, two rates for CAP water, and a spill water rate. The per acre rate will provide funds to cover the personnel and maintenance costs while the per acre-foot delivery rate will provide funds to cover remaining costs.

EFFECTIVE DATE: The rates stated in this public notice became effective January 1, 1991, and will remain in effect until changed by action of the Area Director.

FOR FURTHER INFORMATION CONTACT: Superintendent, Salt River Agency, Route 1, Box 117, Scottsdale, Arizona 8526, telephone COM (602) 640–2842.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

The current basic operation and maintenance charges were established in 1988 at $18.00 per acre for the delivery of two (2) acre-feet. In 1988 the third acre-foot was $21.65 and the rate for any water delivered beyond 3 acre-feet was $36.00. The $36.00 rate (pumped water) was raised to $38.70 in May 1990 due to increased power rates. Spill water rate was established in 1988 at $6.75 per acre-foot.

The costs of labor, materials, equipment, power and energy have continued to increase each year. Lack of stored water in the previous three years has resulted in expenditure of reserve funds to provide the promised water supplies.

Without the substantial increases contained in the announcement, the Agency will not be able to deliver water in 1991.

Agency and Area Office staff met with the water users and the Salt River Pima-Maricopa Indian Community (Community) on October 18, 1990. The water users indicated that they would not be able to farm at the rates quoted then. Agency and Area Office staff have reduced costs in response to their own research and information supplied by the Community. These are reflected in this document.

Salt River Indian Irrigation Project Annual Operations and Maintenance Assessment Rates

Basic Assessment—The basic operation and maintenance assessment rate against the assessable lands under the Salt River Indian Irrigation Project in Arizona, to which water can be delivered through the irrigation project works, is hereby fixed at the rate of $38.00 per acre for delivery of two (2) acre-feet of water. Irrigation water will not be delivered until the basic operation and assessments are paid.

Assessment Rate for the next 1.25 Acre-Foot—Water delivered above two (2) acre-feet and up to 3.25 acre-feet is hereby fixed at the rate of $43.00 per acre-foot, measured at the farm delivery point. Payment shall be made in advance of delivery of water except where arrangements have been made for payment. The cost per acre-foot of water will be adjusted as the electrical energy supplier adjusts the rate at which electrical energy is supplied to the Salt River Indian Irrigation Project (none anticipated before October 1991.) Adjustment, up or down, shall be made on the first day of the month following notification of the change in electrical rates.

The projections above are based on development of a minimum of 10,000 acre-feet of stored water. If more water becomes available, the Community will be consulted about distribution and rates.

Rates for CAP water cover the cost of the water to the Project. The first 0.7 acre-foot per acre costs $48.41, the second 0.7 acre-foot per acre costs $51.86.

In summary, the first two acre-feet will be delivered for the basic assessment rate of $38.00 per acre; the next 1.25 acre-foot will cost $43.00 per acre-foot; the next 0.7 acre-foot will cost $48.41 per acre-foot and the final 0.7 acre-foot will cost $51.86 per acre-foot, for a total of 4.65 acre-feet per acre.

Municipal and Industrial—Assessment rate for delivery of water for Municipal and Industrial purposes is hereby fixed at $85.00 per acre-foot.

Spill Water—Spill water is not charged against the apportionment, and may be delivered, when available, at the rate of $9.00 per acre-foot. Payment shall be made in advance of delivery except where arrangements have been made for payment.

Payment—The annual basic assessment charge shall be due and payable on or before February 1st of each year.

Interest and Penalty Fees—Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, Part 3.8, Debt Collection Procedures.

Delivery of Water—Delivery of water shall be made to all tracts of land for which the basic assessment is paid and water delivery rates are paid as set for the year 1991 and subsequent years until further notice.

Wilson Barber, Jr.,

Phoenix Area Director.

[FR Doc. 91–13851 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
June 12, 1991

Part VI

Department of Education

National Assessment of Educational Progress Data Reporting Program; Notice

DEPARTMENT OF EDUCATION

National Assessment of Educational Progress Data Reporting Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1992.

SUMMARY: The Secretary proposes priorities for fiscal year (FY) 1992 under the National Assessment of Educational Progress (NAEP) for a Data Reporting Program. The Secretary takes this action to ensure a thorough and detailed investigation of the data from the 1990 NAEP and the 1991 NAEP High School Transcript Study. The priorities are proposed in order to expand the available information about factors related to the academic achievement of U.S. children in public and private schools.

DATES: Comments must be received on or before July 12, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Alex Sedlacek, U.S. Department of Education, 555 New Jersey Avenue, NW., room 306D, Washington, DC 20208–5653.

FOR FURTHER INFORMATION CONTACT: Alex Sedlacek, 202–219–1734. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: NAEP is a primary indicator of the level of U.S. students' academic achievement. Since 1969, NAEP has been assessing what American students know and can do in a variety of curriculum areas and plotting their progress across time. To provide context for the achievement results, NAEP also collects demographic, curricular and institutional background information from students, teachers and school administrators. The 1991 NAEP High School Transcript Study (Transcript Study) collected transcript data on a sample of the twelfth graders who participated in the 1990 NAEP. The Transcript Study collected data on the characteristics of students and the characteristics of the high school courses the students took.

The contract with the Educational Testing Service to design and administer the 1990 NAEP includes provisions for the preparation and dissemination of a series of reports on the NAEP data. Under the proposed priorities, the Secretary will encourage other educational researchers to study the NAEP and Transcript Study data and prepare reports on specific topics in order to expand the available information about the teacher background variables, instructional variables, school environment variables and student background variables that relate to academic achievement.

The Secretary plans to award analysis grants under the proposed priorities in order to encourage a broader range of educational researchers to work with the NAEP and Transcript Study data, and to foster the development of new approaches to analyzing and reporting on these data sets.

The proposed priorities are intended to ensure that competitive grant projects meet the standards required for accurate statistical analysis of the complex data produced by NAEP and the Transcript Study.

Please note that there are no program regulations for this competition; therefore, in evaluating applications, the Secretary will use the selection criteria in the Education Department General Administrative Regulations (34 CFR 75.210).

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other consideration of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

NOTE: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Proposed Absolute Priority: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority: *Analysis of Data from the 1990 NAEP and the 1991 NAEP High School Transcript Study.*

Applications proposing to conduct analyses of the data from the 1990 NAEP authorized by section 406(i) of GEPA, and the 1991 NAEP High School Transcript Study. Each analysis project must be designed to increase the information available to educational policymakers in areas where student performance might be affected by institutional change. Each project must include the publication and dissemination of the results of the data analysis, after completing the National Center for Education Statistics (NCES) peer review procedure.

Each proposed analysis must—

(1) Account for the sampling error associated with the multi-stage sampling plan of NAEP when estimating the precision of all statistical parameters; and

(2) Account for the measurement error in the multiply-imputed NAEP proficiency scores when estimating statistical parameters and their standard errors.

Proposed Competitive Preference Priorities: Under 34 CFR 75.105(c)(2)(i) the Secretary proposes to give preference within the absolute priority to applications that meet one or more of the following competitive priorities. The number of points the Secretary proposes to award to an application that meets a competitive priority in a particularly effective way is indicated in parentheses next to the title of the priority. These points would be in addition to any points the application earns under the selection criteria.

Proposed Competitive Priority 1

Innovative Approaches to Analysis of the 1990 NAEP and 1991 Transcript Study Data. (Up to 8 points)

Analysis projects that develop new approaches to analyzing and reporting the information contained in the NAEP and Transcript Study data, or appropriately apply state-of-the-art statistical procedures such as loglinear modeling, covariance structure analysis, and hierarchial linear modeling.

Proposed Competitive Priority 2

Development of Analytic Software Applicable to NAEP Data. (Up to 7 points)

Analysis projects that include the development of statistical software that would allow more advanced analytic techniques to be readily applied to NAEP data.

Invitational Priorities: Within the absolute and competitive priorities specified in this notice, the Secretary plans to establish the following invitational priorities. However, applications that meet these invitational priorities will not receive absolute or competitive preference over other applications.

Projects that—

(1) Address the instructional factors, family background factors, and school and teacher characteristics that the

educational research literature suggests are correlates of academic performance;

(2) Do not overlap with the data analysis projects that will be listed in the application package, that are already being done by the NAEP contractor; and

(3) Use research done on statistical effect size to ensure that inferences made about project findings have practical as well as statistical significance.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 306D, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance Number 84.999B, National Assessment of Educational Progress Data Reporting Program)

Authority: 20 U.S.C. 1221e–1(i)

Dated: May 22, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–13907 Filed 6–11–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
June 12, 1991

Part VII

Department of Education

Grants, Invitation to Apply; Library Services to Indian Tribes and Hawaiian Natives Program; Notice

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement—Library Programs Invitation To Apply for New Awards for Fiscal Year 1992

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1992.

SUMMARY: The Secretary invites applications for new awards for fiscal year 1992 and announces closing dates for the transmittal of applications under the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants, Library Career Training Program, Strengthening Research Library Resources Program, Library Literacy Program, College Library Technology and Cooperation Grants Program, Foreign Language Materials Acquisition Program, and Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.

DATES: The closing dates for transmitting applications under this notice are listed in section I of this notice.

ADDRESSES: The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs contained in section II of this Notice.

To contact any persons named in this announcement, deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: All programs announced in this notice, with the exception of the Library Services to Indian Tribes and Hawaiian Natives Program, including both Basic Grants and Special Projects Grants, are subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this order will be included in the application packages.

Any institution of higher education that wishes to apply for funds under one of the programs authorized by title II of the Higher Education Act (HEA) (20 U.S.C. 1021 *et seq.*) must be an eligible institution under the terms of 20 U.S.C. 1201(a). If you wish to apply to the Department of Education for a determination of institutional eligibility, you may contact: Ms. Lois Moore, U.S. Department of Education, Office of Postsecondary Education, Debt Collection and Management Assistance Service, Division of Eligibility and Certification, 400 Maryland Avenue, SW., room 3522, Washington, DC 20202–5323, (202) 708–4913.

Organization of Notice. This notice contains two sections. Section I includes a chart listing closing dates in chronological order, and other pertinent information about programs covered by this notice. Section II consists of the individual application announcements for each program.

SECTION I.—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

Title of program and CFDA number	Applications available	Application deadline date	Deadline for intergovernmental review	Tentative award date	Estimated available funds [1]	Estimated range of awards [1]	Estimated avg. size of awards [1]	Estimated number of awards [1]
Library Services to Indian Tribes and Hawaiian Natives Program-Basic Grants (84.163A)	8/15/91	10/01/91	NA	2/21/92	[3] $920,000 [4] 615,000	NA	[3] $5,300	181
Library Career Training Program-Fellowship Awards (84.036B)	8/23/91	10/10/91	12/10/91	2/12/92	651,000	10,800–64,000	14,800	30
Strengthening Research Library Resources Program (84.091A)	8/19/91	10/28/91 [2] 12/02/91	12/27/91	6/12/92	5,000,000	40,000–500,000	170,000	29
Library Literacy Program (84.167A)	9/06/91	11/08/91	1/08/92	6/30/92	8,163,000	1,000–35,000	30,000	270
College Library Technology and Cooperation Grants Program (84.197A)	11/01/91	1/17/92	3/17/92	8/14/92	3,404,000	15,000–285,000	A 48,000 B 155,000 C 57,000 D 111,000	35
Foreign Language Materials Acquisition Program (84.239A)	12/06/91	3/09/92	5/08/92	7/15/92	976,000	2,500–125,000	A 73,000 B 30,000	26
Library Services to Indian Tribes and Hawaiian Natives Program-Special Projects Grants (84.163B)	02/10/92	4/03/92	NA	8/15/92	920,000	25,000–160,000	65,000	11

[1] The Department is not bound by any estimates in this notice. The estimated available funds reflects fiscal year 1991 appropriation amounts; however, the Administration's budget request for fiscal year 1992 does not include funds for these programs, other than set-asides for Indian Tribes and Hawaiian Natives. Applications are being invited to allow sufficient time for evaluation and completion of the grant process before the end of fiscal year 1992, should the Congress appropriate funds for these programs.
[2] 10/28/91 for institutions needing to establish eligibility; 12/02/91 for all others.
[3] Indian Tribes.
[4] Hawaiian Natives.

Section II—Application Notices

CFDA No. 84.163A—Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV)

Purpose

Provides basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Applicable Regulations

(a) The Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 771; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74 (for grants to Hawaiian native organizations), 75, 77, 79 (for grants to Hawaiian native organizations), 80, 81, 82, and 85.

For Applications or Information Contact

Beth Fine, Program Officer, Library Development Staff, Library Programs,

U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 351 *et seq.*

CFDA No. 84.036B—Library Career Training Program—Fellowships and Institutes (Higher Education Act, title II, part B)

Purpose

Provides grants to train persons in librarianship through fellowships, institutes, and traineeships.

Applicable Regulations

(a) The Library Career Training Program Regulations in 34 CFR part 776; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Priorities

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 776.5 the Secretary gives an absolute preference to applications for fellowships that meet one of the following priorities. The Secretary funds under this competition only applications for fellowships that meet one of these absolute priorities:

Priority 1: To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

Priority 2: To increase excellence in library education by encouraging study in librarianship and related fields at the doctoral level.

Invitational Priority: Within absolute priority #2 specified above, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

To place particular emphases on library planning, evaluation, and research.

For applications or information contact

Yvonne B. Carter, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.091A—Strengthening Research Library Resources Program (Higher Education Act, Title II, Part C)

Purpose

Provides grants to the Nation's major research libraries to maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Applicable Regulations

(a) The Strengthening Research Library Resources Program Regulations in 34 CFR part 778; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

For Applications or Information Contact

Louise Sutherland or Linda Loeb, Program Officers, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.167A—Library Literacy Program (Library Services and Construction Act, Title VI)

Purpose

Provides grants to State and local public libraries to support literacy projects. Grants may not exceed $35,000.

Applicable Regulations

(a) The Library Literacy Program Regulations in 34 CFR part 769; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86.

For Applications or Information Contact

Carol Cameron Lyons or Barbara Humes, Program Officers, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 351 *et seq.*

CFDA No. 84.197A—College Library Technology and Cooperation Grants Program (Higher Education Act, Title II, Part D).

Purpose

To encourage resource-sharing projects among the libraries of institutions of higher education through the use of technology and networking, to improve the library and information services provided to them by public and nonprofit private organizations, and to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences. There are four categories of awards: (A) Networking; (B) Combination; (C) Services to Institutions; and (D) Research and Demonstration.

Applicable Regulations

(a) The College Library Technology and Cooperation Grants Program Regulations in 34 CFR part 779; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

For Applications or Information Contact

Neal Kaske, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.239A—Foreign Language Materials Acquisition Program (Library Services and Construction Act, Title V)

Purpose

This program makes grants to State and local public libraries for the acquisition of foreign language materials to meet the needs of the communities they serve. By law, (A) up to 30 percent of the funds available may be used to make grants in amounts between $35,000–$125,000; (B) of the remaining funds, no grant may exceed $35,000. In addition, no recipient may receive more than one grant under this program in the same fiscal year.

Applicable Regulations

(a) The Foreign Language Materials Acquisition Program Regulations in 34 CFR part 768; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86.

For Applications or Information Contact

Linda Loeb or Carol Cameron Lyons, Program Officers, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 351 *et seq.*

CFDA No. 84.163B—Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act, Title IV).

Purpose

This program makes competitive awards to eligible Indian tribes to establish or improve public library services. All available funds for library services to Hawaiian natives are awarded through the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (CFDA No. 84.163A).

Applicable Regulations

(a) The Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 772; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74 (for grants to Hawaiian native organizations), 75, 77, 79 (for grants to Hawaiian native organizations), 80, 81, 82, and 85.

For Applications or Information Contact

Beth Fine, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC. 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 351 *et seq.*

Dated: May 29, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Reserach and Improvement.

[FR Doc. 91–1309 Filed 6–11–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
June 12, 1991

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, and 65
Relief for Participants in Operation Desert Shield/Storm; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63 and 65

[Docket No. 26529; Special Federal Aviation Regulation SFAR No. 63]

RIN 2120-AE00

Relief for Participants in Operation Desert Shield/Storm

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is issuing this Special Federal Aviation Regulation (SFAR) to provide certain regulatory relief to civilian and military personnel who have been or are serving in an assignment in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992. This SFAR permits Flight Standards District Offices (FSDO) to accept expired flight instructor certificates, inspection authorizations, and/or airman written test reports for meeting certain eligibility requirements under the current rules. This action is necessary because the FAA has determined that these personnel may be unable to meet the regulatory time limits of their flight instructor certificate, inspection authorization, and/or airman written test report as a result of their assignment. This action is intended to alleviate potential hardships that result from the imposition of time requirements established in the regulations on flight instructor certificates, inspection authorizations, and/or airman written test reports.

EFFECTIVE DATE: June 12, 1991.

EXPIRATION DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: John D. Lynch—Regulations Branch, AFS-850, General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267-8150.

SUPPLEMENTARY INFORMATION

Availability of the Final Rule

Any person may obtain a copy of this SFAR by submitting a request to the FAA, Office of Public Affairs, ATTN: APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267-3484. Persons wanting a copy of this SFAR must identify the SFAR by asking for "Docket No. 26529; Relief for Participants in Operation Desert Shield/Storm Final Rule."

Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On August 2, 1990, when Iraq invaded Kuwait, U.S. military and civilian personnel were rushed to the Middle East/Persian Gulf area or were assigned to military installations away from their home station. For the most part, these personnel had only enough time to take care of personal, immediate affairs prior to leaving. The FAA has received numerous correspondence from some of these personnel asking how they can meet the regulatory time constraints relating to the expiration of their flight instructor certificate, inspection authorization, and airman written test report while serving on assignment in Operation Desert Shield/Storm. These personnel have stated that because of their assignment, they may not be able to meet the regulatory time constraints that relate to the expiration of their flight instructor certificate, inspection authorization, and/or airman written test report.

Statement of the Problem

In response to the numerous inquiries received from civilian and military personnel serving in support of Operation Desert Shield/Storm, the FAA has determined that it needs to provide some regulatory relief to these people who are unable to comply with the regulatory time constraints of their flight instructor certificate, inspection authorization, and/or airman written test report as a result of their assignment. There may not be any FAA examiners/inspectors or facilities readily available in the area where these people were located. Also, the FAA believes that even those civilian and military personnel who are activated for Operation Desert Shield/Storm, but remain located in the United States or at a location outside the Middle East/Persian Gulf area, may find their work schedules so demanding that it would be impossible to schedule a practical test. Most of these people were located at a military base that is away from their normal training or work environment. As a result, many of these people were unable to comply with the regulatory time limits of their flight instructor certificate, inspection authorization, and/or airman written test report, as required by the appropriate Federal Aviation Regulations (FAR). Therefore, the FAA has determined the uniqueness of the situation warrants consideration for adopting this SFAR.

History

In the past, the FAA has permitted the airline transport pilot (ATP) written test reports of § 61.39(b) to be extended beyond the 24-month expiration date. That rule allows an applicant for an ATP certificate to take the practical test for that certificate after the 24-month time period has elapsed on the written test report. However, the provisions of that rule require the applicant to (1) have been continuously employed as a pilot or as a pilot assigned to flight engineer duties since passing the written test; or (2) be participating in an approved pilot training program of a U.S. air carrier or commercial operator.

In addition, the FAA has issued grants of exemptions from § 61.39 (a)(1) and (b), when it was determined that the petitioner's situation was unique and safety would not be compromised. In every case where a grant of exemption was issued, the petition involved an extension of the expiration date of an ATP written test report for a pilot of a part 121 air carrier company and the pilot had been furloughed.

In all cases not involving the ATP written test reports, the FAA has denied all requests for exemption. The FAA has consistently stated in those denials of exemption, that, "* * * the 24-month validity period for written test reports is a reasonable one and provides some assurance that an applicant has appropriate and reasonably current aeronautical knowledge at the time of the flight test."

However, the FAA believes the situation for personnel involved in Operation Desert Shield/Storm is different. By establishing this SFAR, the FAA is not changing its past position on this issue because this SFAR is only applicable for a limited time to those civilian and military personnel serving in support of Operation Desert Shield/Storm.

In the previously issued denials of exemption on this matter, the FAA based its findings on the fact that the 24-month validity period for airman written test reports is reasonable and provide some assurance that an applicant has appropriate and reasonably current aeronautical knowledge at the time of the flight test. In the past, the FAA has received numerous inquiries from persons requesting extension of their airman written test report because they had to reschedule their practical test to a date that was after the expiration date on the written test report. While the FAA was sympathetic to the needs of

previous petitioners and realizes that there are times when practical tests have to be cancelled or rescheduled, previous petitions for extension of time were nonetheless denied for the reason cited above, and because the petitioners were free to schedule and attend practical tests on numerous occasions during the 24-month period. However, the people involved in Operation Desert Shield/Storm do not have the same opportunity to meet the time constraints of their airman written test report, because no FAA examiners/inspectors or facilities are readily available in the area and/or because their work schedules and orders may prohibit them from leaving to take the flight/practical tests.

Discussion of the Final Rule

Introduction

This final rule is based on Notice of Proposed Rulemaking (NPRM) No. 91–10 (56 FR 14292; April 8, 1991).

The FAA has determined that this SFAR is important for providing regulatory relief for those civilian and military personnel, who are required to serve in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

Discussion of Comments Received

Two comments favoring NPRM No. 91–10 were received from the National Business Aircraft Association, Inc. and the Air Line Pilots Association. One comment was received that questioned why the FAA had not provided similar relief in past wars. These were the only comments received in response to the NPRM.

Flight Instructor Certificate

This SFAR permits Flight Standards District Offices (FSDO) to accept an expired flight instructor certificate to show eligibility for the renewal of a person's flight instructor certificate in accordance with the provisions of § 61.197. Therefore, civilian and military personnel, who can show the kind of evidence required by this SFAR, are permitted to apply for renewal of their flight instructor certificates in accordance with § 61.197. The provisions of this SFAR apply only to those persons who complete the appropriate requirements of § 61.197 within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner. In addition, this SFAR applies only to those personnel whose flight instructor certificates expired within the time period from 60 days prior to their assignment to 60 days after reassignment from Operation Desert Shield/Storm. These civilian or military personnel are not permitted to exercise the privileges of their flight instructor certificate if it has expired, but are permitted to renew their flight instructor certificate in accordance with the provisions of § 61.197.

Airman Written Test Reports of Parts 61, 63, and 65

Additionally, this SFAR permits an extension of the expiration date of the airman written test reports of parts 61, 63, and 65. The provisions of this SFAR applies only to those persons who complete the required flight/practical test within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner. Furthermore, this SFAR applies only to those personnel whose airman written test reports expired within the time period from 60 days prior to their assignment to 60 days after reassignment from Operation Desert Shield/Storm.

Inspection Authorization of Part 65

This SFAR permits FSDO's to accept an expired inspection authorization and evidence of participation in Operation Desert Shield/Storm for renewal without meeting the requirements of § 65.93. The provisions of this SFAR apply only to those persons who apply for renewal within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner. Furthermore, this SFAR applies only to those civilian or military personnel whose inspection authorization expired within the time period from 60 days prior to assignment to 60 days after reassignment from Operation Desert Shield/Storm. These civilian or military personnel are not permitted to exercise the privileges of their inspection authorization if it has expired, but are permitted to renew their inspection authorizations in accordance with the provisions of this SFAR.

Evidence of Operation Desert Shield/Storm Participation

The FAA has determined that an assignment in support of Operation Desert Shield/Storm means a person who served a tour of duty during the time period from August 2, 1990 to December 31, 1992. An assignment in support of Operation Desert Shield/Storm may be an assignment at a location in the Middle East/Persian Gulf area or at some other location, but the person's assignment must have been during the time period from August 2, 1990 to December 31, 1992. The 6 calendar month grace period in this SFAR will be calculated from the date shown on the official orders or documentation that reassigns the person from Operation Desert Shield/Storm. The person's flight instructor certificate, inspection authorization, and/or airman written test report must have expired within the time period from 60 days prior to the assignment date on the person's assignment orders/documentation to 60 days following reassignment. The evidence required to substantiate an assignment must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm, and shall be one of the following:

1. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

2. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

3. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

4. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

General

The FAA has determined that the regulatory relief provided by this SFAR will not result in a derogation of safety, because the checks and balances provided by the FAA's airman certification procedures will assure that safety is maintained. This belief is based on the fact that prior to renewing a flight instructor certificate, a person will be required to comply with the appropriate requirements of § 61.197. In the case of an expired airman written test report, a person will be required to complete a flight/practical test, in accordance with the appropriate rules of parts 61, 63, or 65, as appropriate. Furthermore, the FAA has issued instructions to its Flight Standards District Offices to monitor the situation very closely to ensure that safety is

maintained. Examiners and inspectors have been directed to give especially close attention during flight/practical tests on any showing of deficiencies in current aeronautical knowledge by those applicants qualifying under this SFAR. If a major safety problem arises, the FAA will not hesitate to take corrective action.

The FAA has determined that this SFAR will not apply to the medical certificate and pilot proficiency requirements of §§ 61.23, 61.55, 61.56, 61.57, and 61.58. The FAA has determined the requirements cited in those rules should not be waived because they involve a person's medical fitness, demonstration of piloting skills, and/or mechanic skills. The FAA does not believe requiring compliance with those rules will impose an additional hardship on our civilian and military personnel assigned to Operation Desert Shield/Storm. Upon their return to the United States, these people will be handled as any other pilot or mechanic, and compliance with these rules will not impose any additional requirement. Furthermore, the FAA believes that waiving these requirements would not be in the public interest and would have an adverse effect on safety. Therefore, those civilian and military personnel assigned to Operation Desert Shield/Storm whose medical certificate, pilot proficiency, and/or pilot recurrency requirements have lapsed will have to satisfy the normal requirements that relate to exercising the privileges of an airman certificate.

Regulatory Evaluation

Regulatory Evaluation Summary

The FAA has determined that the expected economic impact of this SFAR is so minimal that it does not warrant a full regulatory evaluation. The basis of this determination is that this SFAR imposes no costs on society because an equivalent level of safety will be maintained while providing unquantifiable benefits to certificate holders who are the subject of the rule. Since benefits exceed costs, the FAA has determined that this SFAR is consistent with the objectives of Executive Order 12291.

International Trade Impact Statement

This SFAR does not affect international trade involving aviation products or services. Therefore, the FAA certifies this SFAR will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States. This SFAR will not eliminate existing or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of entities." It is certified that this SFAR will neither have a significant negative or positive economic impact on a substantial number of small entities.

Federalism Implications

The provisions in this SFAR 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 SFAR will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons previously 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 SFAR is not major under Executive Order 12291. In addition, the FAA certifies that this SFAR will not have a significant impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Furthermore, the FAA has determined that a regulatory evaluation for this SFAR is not warranted.

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 63

Air safety, Air transportation, Airman, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airman, Aviation safety, Air transportation, Aircraft.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends parts 61, 63, and 65 of the Federal Aviation Regulations (14 CFR parts 61, 63, and 65) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. By adding Special Federal Aviation Regulation (SFAR) No. [63] to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 63—Relief For Participants in Operation Desert Shield/Storm

Sections

1. Applicability.
2. Required documents.
3. Expiration date.

1. Applicability. Contrary provisions of part 61 notwithstanding, under the procedures prescribed herein, Flight Standards District Offices (FSDO) are authorized to accept an expired flight instructor certificate to show eligibility for the renewal of a person's flight instructor certificate in accordance with the provisions of § 61.197, or an expired written test report to show eligibility under part 61 to take a flight/ practical test, provided—

a. It is submitted by a civilian or military person who served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. The person's flight instructor certificate and/or airman written test report expired within the time period from 60 days prior to assignment to 60 days after reassignment from support of Operation Desert Shield/Storm; and

c. The person complies with the appropriate requirements of § 61.197 or completes the required flight/practical test, as appropriate, within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner.

2. Required documents. The FSDO and applicant shall include one of the following documents with the airman application, and the documents must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm:

a. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

c. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

d. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

3. Expiration date. This SFAR expires December 31, 1992, unless sooner superseded or rescinded.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

4. By adding Special Federal Aviation Regulation (SFAR) No. [63] to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 63—Relief for Participants in Operation Desert Shield/Storm

Sections

1. Applicability.
2. Required documents.
3. Expiration date.

1. Applicability. Contrary provisions of part 63 notwithstanding, under the procedures prescribed herein, Flight Standards District Offices (FSDO) are authorized to accept an expired written test report to show eligibility under §§ 63.33 and 63.57 to take a flight/practical test, provided—

a. It is submitted by a civilian or military person who served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. The person's airman written test report expired within the time period from 60 days prior to assignment to 60 days after reassignment from support of Operation Desert Shield/Storm; and

c. The person completes the required flight/practical test within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner.

2. Required documents. The FSDO and applicant shall include one of the following documents with the airman application, and the documents must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm:

a. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

c. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

d. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

3. Expiration date. This SFAR expires December 31, 1992, unless sooner superseded or rescinded.

PART 65—CERTIFICATION: AIRMAN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

6. By adding Special Federal Aviation Regulation (SFAR) No. [63] to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 63—Relief for Participants in Operation Desert Shield/Storm

Sections

1. Applicability.
2. Required documents.
3. Expiration date.

1. Applicability. Contrary provisions of part 65 notwithstanding, under the procedures prescribed herein, Flight Standards District Offices (FSDO) are authorized to accept an expired written test report to show eligibility to take a practical test required under this Part and/or renew an expired inspection authorization to show eligibility for renewal under § 65.93, provided—

a. The person is a civilian or military person who served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. The person's airman written test report and/or inspection authorization expired within the time period from 60 days prior to assignment to 60 days after reassignment from support of Operation Desert Shield/Storm; and

c. The person completes the required practical test within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner.

2. Required documents. The FSDO and applicant shall include one of the following documents with the airman application, and the documents must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm:

a. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

c. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

d. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

3. Expiration date. This SFAR expires December 31, 1992, unless sooner superseded or rescinded.

Issued in Washington, DC, on June 6, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-13931 Filed 6-7-91; 12:03 pm]

BILLING CODE 4910-13-M

federal register

Wednesday
June 12, 1991

Part IX

Department of Education

Training Programs for Educators—Innovative Alcohol Abuse Education Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.238]

Training Programs for Educators—Innovative Alcohol Abuse Education Programs

Notice inviting applications for new awards for fiscal year (FY) 1991.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide financial assistance to train educators in strategies designed to mitigate problems associated with alcoholism in the family.

Eligible Applicants: The following are eligible for new awards under this competition: State and local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions.

Deadline for Transmittal of Applications: July 15, 1991.

Deadline for Intergovernmental Review: September 13, 1991.

Available Funds: $1,500,000.

Estimated Range of Awards: $200,000 to $350,000.

Estimated Average Size of Awards: $300,000.

Estimated Numbers of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months, with up to 12 additional months contingent upon Congressional funding, satisfactory performance, and the government's best interest.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administrative of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), P⅛art 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses); (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; and (c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99.

Description of Program: Training Programs for Educators—Innovative Alcohol Abuse Education Programs are authorized under section 4607(b) of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 3156–1(b)).

With 1990 funds appropriated under section 4607(a) of ESEA, the Department is currently developing the following: A handbook for educators on alcohol abuse prevention; a module on high-risk youth that will be added to Learning to Live Drug Free (the Department's recently issued drug prevention curriculum model); instructional materials on alcohol abuse education designed to assist educators of children from special populations (Hispanics, Blacks, Native Americans, the economically disadvantaged); and instructional materials for use by educators in classrooms where children of several cultures are represented. These materials will be available by October 1991 and will be provided to grantees for use in training projects funded under this program.

Projects supported under this program must provide training in four statutorily mandated areas. Each project must:

- Increase educators' awareness of children's problems that may be caused by an alcoholic parent;
- Enhance educators' ability to identify children at risk for alcohol abuse;
- Inform educators concerning referral of children of alcoholics for appropriate professional treatment; and
- Train educators to inform the public about the special problems of children who have an alcoholic parent.

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives absolute preference to applications that meet the following priority:

(1) Provide training to educators who serve children in grades 5–8; and

(2) Provide for region-wide training in one of the following geographic areas:

(1) Northeast

Connecticut	New Jersey
Delaware	New York
Maine	Ohio
Maryland	Pennsylvania
Massachusetts	Rhode Island
New Hampshire	Vermont

(2) Southeast

Alabama	Puerto Rico
District of Columbia	South Carolina
Florida	Tennessee
Georgia	Virginia
Kentucky	Virgin Islands
North Carolina	West Virginia

(3) Midwest

Indiana	Missouri
Illinois	Nebraska
Iowa	North Dakota
Michigan	South Dakota
Minnesota	Wisconsin

(4) Southwest

Arizona	Mississippi
Arkansas	New Mexico
Colorado	Oklahoma
Kansas	Texas
Louisiana	Utah

(5) West

Alaska	Nevada
American Samoa	North Mariana Islands
California	Oregon
Guam	Republic of Palau
Hawaii	Washington
Idaho	Wyoming
Montana	

(3) Midwest

Indiana	Missouri
Illinois	Nebraska
Iowa	North Dakota
Michigan	South Dakota
Minnesota	Wisconsin

(4) Southwest

Arizona	Mississippi
Arkansas	New Mexico
Colorado	Oklahoma
Kansas	Texas
Louisiana	Utah

(5) West

Alaska	Nevada
American Samoa	North Mariana Islands
California	Oregon
Guam	Republic of Palau
Hawaii	Washington
Idaho	Wyoming
Montana	

Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet the absolute priority.

Competitive Preference

The Secretary gives preference to applications that meet the following competitive priority:

(a) Demonstrate a comprehensive understanding of alcohol abuse as it relates to children of alcoholics and their families;

(b) Demonstrate the capability to establish relationships with local

educational agencies, State educational agencies, and institutions of higher education that are sufficiently sound to facilitate the replication of the training to be provided under this grant; and

(c) Demonstrate the capability to contribute to increased public awareness of issues related to children of alcoholics and their families through a dissemination network.

Under 34 CFR 75.105(c)(2)(i), the Secretary awards up to 15 additional points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points that the application earns under the selection criteria.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The criteria.—(1) Meeting the purposes of the authorizing statute. (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of section 4607(b) of the (ESEA), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of section 4607(b) of the ESEA.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in section 4607(b) of the ESEA, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the projects; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (15 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (7 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee).

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on September 17, 1990, pages 38210 and 38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #4.238, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note That The Above Address Us Not The Same Address As The One To Which The Applicant Submits Its Completed Application. Do Not Send Applications To The Above Address.

Instructions For Transmittal Of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.238), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.238), Room #3633, Regional

Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR INFORMATION CONTACT: Madeline Bosma, Division of Drug-Free Schools and Communities, U.S. Department of Education, 400 Maryland Avenue SW., room 2132, Washington, DC 20202–6439; Telephone: (202) 401–3510. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3156–1(b).

Dated: May 30, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State — H Independent School Dist.
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify)

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 3 8

TITLE Training Programs for Educators--
Innovative Alcohol Abuse Education Programs

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a Applicant	b Project

15. ESTIMATED FUNDING:

a Federal	$ .00
b Applicant	$ .00
c State	$ .00
d Local	$ .00
e Other	$ .00
f Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item Entry

1 Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3 State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7 Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided

— "New" means a new assistance award.

— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation

9 Name of Federal agency from which assistance is being requested with this application.

10 Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11 Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Indicate the regional area where the training will be provided.

3. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package;

4. If a project is being proposed for more than one year, activities and timelines must be proposed for each budget period/year (EDGAR 34 CFR 75.112). Applicants for multi-year projects must also include: (a) Information that shows why a multi-year project is needed; (b) a budget for the first budget period/year of the project; and (c) an estimate of the Federal funds needed for each budget period of the project after the first budget period (EDGAR 34 CFR 75.117).

5. Provide an assurance of compliance with the statute;

6. Include a discussion of how the training for educators who serve children in grades 5–8 will:

(a) Increase educators' awareness of children's problems that may be caused by an alcoholic parent;

(b) Enhance educators' ability to identify children at risk for alcohol abuse;

(c) Inform educators concerning referral of children of alcoholics for appropriate professional treatment; and

(d) Train educators to inform the public about the special problems of children who have an alcoholic parent.

7. Include any other pertinent information that might assist the Secretary in reviewing the application.

If the applicant wishes, include a discussion responding to the competitive preference that:

(a) Demonstrates a comprehensive understanding of alcohol abuse as it relates to children of alcoholics and their families;

(b) Demonstrates the capability to establish relationships with local educational agencies, State educational agencies, and institutions of higher education that are sufficiently sound to facilitate the replication of the training to be provided under this grant; and

(c) Demonstrates the capability to contribute to increased public awareness of issues related to children of alcoholics and their families through a dissemination network.

Please limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only).

Estimated Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 48 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1810–0554, Washington, DC 20503.

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3 Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 91-13906 Filed 6-11-91; 8:45 am]

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federal register

Wednesday
June 12, 1991

Part X

The President

Presidential Determination No. 91-39—Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Federal Register

Federal Register
Vol. 56, No. 113
Wednesday, June 12, 1991

Presidential Documents

Title 3—

The President

Presidential Determination No. 91–39 of June 3, 1991

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter "the Act"), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to the Republic of Bulgaria, the Czech and Slovak Federal Republic, the Soviet Union, and the Mongolian People's Republic will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, June 3, 1991.

[FR Doc. 91–14153
Filed 6–10–91; 4:51 pm]
Billing code 3195–01–M

Editorial note: For the President's letter to Congressional leaders and statements by Press Secretary Fitzwater on renewing the most-favored-nation trade status to these countries, see issue 23 of the *Weekly Compilation of Presidential Documents.*

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Wednesday, June 12, 1991

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H.R. 2127/Pub. L. 102–52
Rehabilitation Act Amendments of 1991. (June 6, 1991; 105 Stat. √260; 6 pages) Price: $1.00