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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

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:

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

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 2 and March 5 at 9:00 a.m.

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC

RESERVATIONS: 202–523–4538

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 92-23]

RIN 1557-AB22

Rules, Policies and Procedures for Corporate Activities: Merger, Consolidation, Purchase and Assumption

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

ACTION: Interim rule with request for comment; extension of comment period.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is extending until March 4, 1993, the comment period for its interim rule with request for comment regarding its Rules, Policies and Procedures for Corporate Activities; Mergers and Consolidations, Purchase and Assumption. This action will provide interested persons additional time to prepare and submit comments.

DATES: Comments must be received by March 4, 1993.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, Independence Square, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 92-23. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Jerome Edelstein, Senior Counsel, Corporate Organization and Resolutions Division, (202) 874-5300, or Nancy Cody, National Bank Examiner/Senior Analyst, Bank Organization and Structure, (202) 874-5060.

SUPPLEMENTARY INFORMATION: On November 3, 1992, (57 FR 49639), the OCC published an interim rule with request for comment regarding 12 CFR 5.33 Merger, consolidation, purchase and assumption. The interim rule establishes procedures for national banks to follow in undertaking mergers or consolidations with Federal savings associations. This action is necessitated by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) which authorized such transactions but did not establish procedures. The original comment period closed January 4, 1993. The OCC is extending the comment period until March 4, 1993, in order to give interested parties additional time to comment.

Dated: January 29, 1993.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 93-2141 Filed 1-28-93; 8:45 am]

BILLING CODE 4810-33-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301 and 311

[Docket No. 92-3-DART]

Digital Audio Recording Technology Act; Implementation

AGENCY: Copyright Royalty Tribunal.

ACTION: Interim regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Royalty Tribunal is adopting interim regulations, to implement section 1007 of the Audio Home Recording Act of 1992 (ACT). These interim regulations prescribe the manner for filing claims, with the Tribunal, for royalties from the sale of each digital recording device and blank disc or tape. The interim regulations prescribe the content and filing time of such claims and the procedure for distribution of the royalties.

The regulations are issued on an interim basis in order to allow interested copyright owners to file claims during January and February of 1993, as required by the Act, while permitting full public comment before the issuance of final regulations.

DATES: This interim regulations are effective on January 29, 1993. Public comments concerning the content of the interim regulations are due on or before March 1, 1993. A report concerning the resolution of the issue whether performing rights societies need separate, specific and written authorization to represent members and affiliates is due on or before June 1, 1993.

ADDRESSES: An original and five copies of all comments and reports shall be addressed to Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

SUPPLEMENTARY INFORMATION: On October 28, 1992, the Audio Home Recording Act of 1992 (Act), Public Law 102-563, 106 Stat. 4237 (1992), became effective. The Act provides that the manufacture, importation, and distribution of digital audio recording devices and media is not an infringement of copyright, so long as the first person to manufacture and distribute or import and distribute such device or media: (i) Files an initial notice of distribution; (ii) files quarterly and annual statements of account; and (iii) pays royalties upon distribution of such devices and media in the United States. 17 U.S.C. 1003.

The Act further specifies that any interested copyright owner whose musical work or sound recording has been: (i) Lawfully reproduced in a digital or analog musical recording, and (ii) distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions, during the period when the royalty fees were paid, is entitled to a portion of these fees. 17 U.S.C. 1006. However, qualifying copyright owners must file claims for the fees, with the Copyright Royalty Tribunal, during January and February of each calendar year. 17 U.S.C. 1007(a)(1). The Act authorizes the Tribunal to prescribe the "form and manner" for filing claims. *Id.* The Tribunal, in an Advance Notice of Rule Making, invited comments concerning the filing of claims to royalties. 57 FR 54542 (1992).

The Parties

Comments were filed by: American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc. (SESAC), American Federation of Musicians of

the United States and Canada (AFM), American Federation of Television and Radio Artists (AFTRA), Copyright Management, Inc. (CMI), Electronic Industries Association (EIA), National Music Publishers Association (NMPA), Harry Fox Agency (HFA), Recording Industry Association of America (RIAA), Songwriters Guild of America (SGA), and Gospel Music Coalition (Coalition). Reply comments were filed by all of the foregoing parties except EIA. BMI filed additional reply comments. Nashville Songwriters Association International (NSAI) submitted late-filed comments. ASCAP, BMI and SESAC filed additional reply comments to NSAI's late-filed comments.

The Comments

AFM, AFTRA, ASCAP, BMI, CMI, EIA, NMPA, HFA, RIAA, SESAC, and SGA (Joint Parties) filed comments supporting the Tribunal's "first step" in implementation of the Act. The foregoing parties also suggest that at an appropriate time, the Tribunal may wish to adopt regulations governing the following proceedings: arbitration of the question whether a digital audio recording or interface device is subject to the Act (17 U.S.C. 1010), and maximum royalty rate adjustment (17 U.S.C. 1004(a)(3)).

The Joint Parties filed an additional set of comments proposing regulations for royalty claim filing, and fee distributions, under the Act. In their comments, the Joint Parties compare the language in the Act (17 U.S.C. 1007(a)(1)) which authorizes the Tribunal to "prescribe by regulation", the "form and manner" in which claimants must file their claims for royalties, with the language of the cable compulsory license (17 U.S.C. 111(d)(4)(A)), and the satellite carrier compulsory license (17 U.S.C. 119(b)(4)(A)). They conclude that the language of the Act parallels that of the other two compulsory licenses, and therefore, the Tribunal's regulations for filing claims under the Act should roughly parallel the regulations for filing cable and satellite carrier claims, 37 CFR parts 302 and 309. The Joint Parties attach a proposed Part 311, which parallels parts 302 and 309. The Joint Parties also submit proposed amendments to certain of the Tribunal's existing regulations to account for its distribution duties under the Act and to update its general purpose authority.

ASCAP, BMI, and SESAC (Societies) filed a third set of joint comments addressing the issue as to which form of authorization should be required by regulation to permit them to represent their writer and publisher members and affiliates, and those of affiliated foreign societies under the Act. The Societies claim that they are "in a unique position among the potential claimants to digital audio royalty payments, with particular reference to the Musical Works Fund." This unique position, they claim, is based upon three factors: (a) Their combined vast representation of domestic and foreign writers and publishers of copyrighted musical compositions, (b) their affiliation agreements with foreign societies, which require them to represent the foreign societies' legitimate interests in the Musical Works Fund, and (c) the legislative history of the Act which specifically identifies them as being entitled to make claims on behalf of their members and affiliates.

The Societies argue that their "existing arrangements with writers and publishers, and those of affiliated foreign societies with their writers and publishers, are more than sufficient to allow (them) to represent those writers and publishers before the Tribunal." They claim that these existing arrangements, coupled with contacts which they are making with their members and affiliates concerning their representation, and the efforts they are asserting to ensure that writers and publishers may be represented by any other common agent or themselves, if they desire, provide sufficient authorization for member or affiliate representation.

The Societies also maintain that the Tribunal should treat the filing of claims under the Act in the same manner that it treats the filing of satellite and cable claims. Specifically, they cite to the following provision in the Tribunal's rules:

> A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements, for purposes of this filing and fee distribution.

37 CFR 302.7(a) (cable), 309.2 (satellite). Finally, they assert that it would be extremely burdensome for them to obtain separate, specific and written authorization for representation, from each and every one of their domestic and foreign members and affiliates.

AFM, AFTRA, CMI, HFA (a licensing subsidiary of NMPA), RIAA, and SGA also filed additional comments addressing the issue of whether performing rights societies need additional authorization to file royalty claims for their members and affiliates under the Act. AFM, AFTRA, CMI, HFA, RIAA, and SGA maintain that "interested copyright parties filing joint claims on behalf of individuals must obtain separate, specific written authorization to represent such individuals for the purpose of claiming and distributing royalty payments under the Act." Accordingly, they propose that the Tribunal promulgate a rule which specifies that joint claims may only be filed on behalf of individual claimants who have provided separate, specific and written authorization to the joint claimant, and that a list of the individual claimants be included in the joint claim.

They reason that not only are tens of thousands of interested copyright parties potentially entitled to claim royalty payments under the Act, but many of them have overlapping memberships in organizations in the music industry. Consequently, AFM, AFTRA, CMI, HFA, RIAA, and SGA argue that if these organizations are not required to obtain separate, specific and written authorization to represent each claimant, it is feasible that "duplicate, triplicate and quadruplicate claims would wind up being filed on behalf of many of the same individuals."

They explain that "(n)ot only do music industry organizations feature overlapping memberships, but their members also have multiple roles in the music industry." Therefore, they assert, it is necessary to clarify which organization is representing each individual with respect to claims against each particular subfund. They suggest "that the written authorization executed by the individual claimant identify the subfunds against which an organizational claimant is designated to claim on that individual's behalf."

Furthermore, they reject the argument that requiring written authorizations will be unduly burdensome. Rather, they assert that the administrative apparatus needed for obtaining the requested authorizations "would appear a necessary complement to the ability to claim and distribute royalties under the Act on behalf of such members."

They equally reject the contention that the Act relieves any organizational claimant from the obligation to obtain proper authorization to represent an individual claimant. Specifically, they cite the House Judiciary Committee Report, which states that performing rights societies such as ASCAP and BMI are not themselves directly entitled to receive royalties, but may be designated as common agents to negotiate and receive digital royalties on behalf of others.

Finally, they distinguish the filing of claims under the Act from the filing of claims under the cable and satellite provisions of the 1976 Copyright Act. They reason that under the cable and

satellite provisions, performing rights societies are not required to obtain separate and specific authorization because those provisions provide for statutory licenses of the copyright owner's public performance right. The Act, they argue, was intended to compensate for the impact of home taping on the copyright owner's reproduction and distribution rights, not to compensate for public performances.

The Coalition filed comments which express its concern regarding the possibility that when the royalties from both the Sound Recordings and Musical Works Funds are distributed, Gospel music will be systematically undervalued because of its unique distribution and dissemination characteristics. Therefore, the Coalition argues that a need may arise to evaluate the extent of undervaluation of Gospel music. It maintains that a determination of which music category each claim falls into will be essential to this evaluation, and, therefore, the Tribunal should "require each claimant to state which category, or categories, of music for which claims are being made."

The Coalition also supports a requirement that associations and organizations representing individual claimants before the Tribunal, pursuant to the Act, certify that they have received the affirmative written authorization to represent those individual claimants. According to the Coalition, the appropriate time to require such a certification is at the time the claim is filed.

The Reply Comments

In their reply comments, the Societies reiterate the position that they should not be required to obtain separate, specific and written authorizations to represent individual claimants under the Act. They reason that "given the hundreds of thousands of domestic and foreign writers and publishers involved, any more stringent requirement that they go beyond those normal arrangements to obtain separate, specific, written authorizations for that representation would inevitably disenfranchise a large number of those writers and publishers." They deny that their proposal would result in overlapping claims and an administrative nightmare. The Societies maintain that in the event the parties could not reach a global settlement regarding the allocation of the Musical Works Fund, each representative organization would prove the entitlement of those individual claimants they represent, and the individual claimants each organization represents would be mutually exclusive.

The Societies oppose the Coalition's request for a requirement that claimants identify the category of music for which they are filing claims. They assert that "[m]usic frequently defies such 'characterization.'" Moreover, they question whether this identification will provide any assistance to the parties or the Tribunal.

AFM, AFTRA, CMI, HFA, RIAA, and SGA, in their reply comments, deny that the Act or its legislative history, specifically grants the performing rights societies any special treatment. They contend that the Act merely permits performing rights societies to be designated joint claimants by the individual claimants. They restate their belief that adoption of the Societies' joint proposal would be "administratively burdensome" in that it would result in "duplicate, triplicate and quadruplicate claims."

AFM, AFTRA, CMI, HFA, RIAA, and SGA deny that the existing agreements between the Societies, and their members and affiliates are sufficient to authorize representation for purposes of filing claims under the Act. Additionally, they argue that ASCAP does not presently have the requisite legal authority to expand its operations to include the filing of claims under the Act.

They argue, in the alternative, that if the Societies are entitled to a presumption of authorization to represent their members and affiliates for the purpose of filing claims under the Act, all organizations and associations referenced in the legislative history are equally entitled to such a presumption. They question the Societies' position that the presumption of representation should be applicable only to the Musical Works Fund, and argue that the Societies are attempting to fashion regulations which suit them not the claimants.

Finally, AFM, AFTRA, CMI, HFA, RIAA, and SGA oppose the Coalition's proposal that the Tribunal require claimants to identify the "musical category" for which they are filing claims. They assert that it is neither "necessary" nor "desirable" to require the claimants to provide such information, since frequently musical works fall into more than one category.

The Coalition's reply comments reiterate its support for the proposal that organizations alleging to represent individual claimants before the Tribunal, for the purpose of collecting royalties under the Act, be required to obtain specific, written authorization from the individual claimants. It also supports the proposal of AFM, AFTRA, CMI, HFA, RIAA, and SGA that a joint claim include a list of the represented individual claimants. The Coalition denies that anything in the Act or its legislative history entitles or endorses the participation of any specific representative organization in the filing of claims. The Coalition also renewed its request that claimants be required to identify the music categories for which claims are being made in each subfund.

Additional Comments

BMI requested leave to file additional comments "to clarify one aspect of the factual record." BMI noted for the record that the terms of its consent decree are not the same as those of the ASCAP consent decree. BMI states that unlike the ASCAP consent decree, its consent decree does not limit BMI to representing its affiliates solely for purposes of licensing performing rights.

On December 23, 1992, NSAI filed a letter with the Tribunal stating that it was interested in filing comments in this proceeding. NSAI noted, however, that it needed board approval to issue an official policy on the Act and the next board meeting was scheduled for January 5, 1993. It hoped that the Tribunal would accept its comments.

The Tribunal's General Counsel contacted NSAI to ensure that all the parties had been served with the letter. She was informed that NSAI had not served all the parties, but would promptly do so.

On January 15, 1993, the NSAI filed its comments. The comments consist of suggestions regarding the manner in which the performing rights organizations should formulate their individual distribution methods.

In their additional reply comments, the Societies assert that NSAI's concerns regarding the Societies' formulation of a method for distributing digital royalties to their members affiliates, involves purely private arrangements of claimants and their common agents. These private arrangements, they note, are not within the scope of the Tribunal's authority under the Act. The Societies further assert that if NSAI's position is that the Tribunal should consider NSAI's suggestions for determining a formula, "if and when the Tribunal is called upon to decide any controversy, then the suggestion is premature, for no such controversy now exists." Finally, the Societies again argue that specific and written authorizations beyond existing arrangements are not required for their claims on behalf of their members and affiliates.

Discussion

The Tribunal has reviewed the proposed part 311 submitted by the Joint Parties and agrees with them that the regulations for the filing of claims under the Act should roughly parallel the Tribunal's regulations in the cable and satellite areas. The proposed regulations both parallel the existing regulations and effectively implement the Act. However, the Tribunal will make certain modifications to the jointly proposed regulations.

Specifically, the Tribunal notes that pursuant to the Act, 4% of the Sound Recording Fund is to be placed into an escrow account managed by an independent administrator. 17 U.S.C. 1006. These royalties are to be distributed to nonfeatured musicians and vocalists (nonfeatured performers), who have performed on sound recordings distributed in the United States. *Id.* These nonfeatured performers, however, are not included in the Act's definition of interested copyright party. 17 U.S.C. 1001(7). Since, under the Act, the Tribunal's authority over the distribution of royalties extends only to interested copyright parties, the nonfeatured performer royalties do not fall within the scope of the Tribunal's authority. 17 U.S.C. 1007. Consequently, the Tribunal will propose no rules concerning the nonfeatured performers' royalty fund.

Additionally, the Tribunal believes that claimants should be required to state in their claims how they conform with the definition of interested copyright party specified in section 1001(7) of the Act. 17 U.S.C. 1001(7). The Tribunal also feels that claims should include a claimant's telephone and facsimile numbers to assure that the Tribunal can promptly contact the claimant, if any questions arise regarding the claim.

Accordingly, with the foregoing modifications, the Tribunal proposes the adoption of the jointly proposed part 311.

The Joint Parties, however, differ on the issue of whether performing rights societies need separate, specific and written authorization to file royalty claims for their members and affiliates under the Act. Having carefully considered all the arguments presented by the parties, the Tribunal concludes that this issue, in fact, involves a private contractual dispute.

The Tribunal rejects the Societies' assertion that the Act grants them special entitlement to make claims on behalf of their members and affiliates. The legislative history of the Act is clear on the fact that performing rights societies such as ASCAP and BMI are not themselves directly entitled to receive royalties, but may be designated as common agents to negotiate and receive royalties on behalf of others under the Act. H.R. Rep. No. 873, 102nd Cong., 2d Sess., pt. 1, at 18 (1992).

Moreover, the Tribunal is not persuaded by the Societies' position that, since the requested language exempting them from obtaining separate, specific and written authorization is in the rules governing the filing of jukebox, cable, and satellite claims, it should be included in the rules regulating the filing of claims under the Act. The subject language addressing separate, specific and written authorization was included in the jukebox, cable, and satellite rules with the consensus of all the parties. The fact that no objections to the language were filed by any of the parties, and, consequently, no issue arose regarding the language, distinguishes those situations from the present one.

In the instant case, resolution of the issue that has arisen requires an interpretation of the agreements between the performing rights societies and their members and affiliates. The Tribunal is reluctant to engage in the interpretation of private contracts, and, therefore, recommends that the parties revolve this matter among themselves. Nonetheless, if the parties have not notified the Tribunal by June 1, 1993, that the issue has been resolved, the Tribunal will initiate a formal rule making proceeding to permit the compiling of written and oral evidence on this issue.

The Tribunal notes that ASCAP and BMI have notified their members that, "unless they heard from them to the contrary", they would represent their interest in claiming royalty fees in the Musical Works Fund. Additionally, the Tribunal notes that fewer than six weeks remain between the date of this action and the deadline for filing claims for the 1992 digital royalties. In view of the foregoing, if the Tribunal were to require separate, specific, and written authorization for ASCAP and BMI representation, thousands of writers and publishers would be forced to scramble to submit authorizations in the brief time remaining before the deadline for filing claims. Inevitably, a significant number of claimants—who previously believed their interests would be represented without affirmative responses—would become disenfranchised due to no fault of their own.

Accordingly, in an attempt to expedite matters and provide the parties with rules for filing claims for the 1992 digital royalties, the Tribunal will infer an agency relationship between the performing rights societies and their members and affiliates. This rebuttable inference will be utilized solely for purposes of filing claims for and distribution of 1992 digital royalties. If, however, a member or affiliate files an individual claim or grants express authority to another agent, such action will rebut the implied agency relationship. This rebuttable inference, drawn more for the purpose of administrative necessity and the temporary benefit of a substantial number of claimants than on the basis of the facts or the law, shall be within precedential value or prejudice to the Tribunal's determination of this issue in the future.

The Tribunal has also reviewed the proposed amendments to existing regulations regarding royalty distribution proceedings and the general purposes of the Tribunal submitted by the Joint Parties. It is determined that the proposed amendments properly update the relevant regulations.

Furthermore, the Tribunal rejects the Coalition's proposal that each claimant be required to state for which category, or categories, of music the claim is being made. The Coalition's comments primarily a critique of different methods for valuing music types and its arguments are more properly advocated in a distribution proceeding, rather than in this rule making proceeding. Therefore, at this time, the Tribunal expresses no opinion as to the value of any specific method for resolving disputes concerning the distribution of digital royalties. The Tribunal also agrees with the view of the majority of the commenting parties that music often defies such categorization. The Tribunal concludes that such categorization might cause confusion and would provide no significant assistance. Accordingly, the Tribunal will not propose such a requirement.

Finally, it appears to the Tribunal that the sole purpose of NSAI's comments was to suggest royalty distribution formulas to be used by the performing rights organizations in their individual distributions. These organizations' methods of distributing royalties to the parties they represent, however, is a private matter, which is not within the scope of the Tribunal's authority. Accordingly, the Tribunal will not propose any regulations governing these formulas.

Public Comment

The Public is invited to submit comments on the interim regulations on or before March 1, 1993.

List of Subjects in 37 CFR Parts 301 and 311

Copyright, Digital Audio Home Recording Act.

Interim Regulations

In lieu of the foregoing, the Tribunal is amending 37 CFR Chapter III in the manner set forth below:

1. The authority citation for Part 301 continues to read as follows:

Authority: 17 U.S.C. §§ 803.(a).

1a. Section 301.1 is amended by adding paragraph (g) and (h) to read as follows:

§ 301.1 Purpose.

* * * * *

(g) To distribute digital audio recording devices and media royalty payments under 17 U.S.C. chapter 10 deposited with the Register of Copyrights.

(h) To consider petitions to adjust the royalty maximum for digital audio recording devices pursuant to 17 U.S.C. 1004(a)(3).

2. Section 301.70 is revised to read as follows:

§ 301.70 Scope.

This subpart governs only those proceedings dealing with the distribution of compulsory cable television, coin-operated phono-record player (jukebox) (and), satellite carrier and digital audio recording devices and media royalty payments (royalties) deposited with the Register of Copyrights, according to the terms of 17 U.S.C. 111(d)(4), 116(c) and, 119(b), and 1005, respectively. It does not govern unrelated rule making proceedings. Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

3. Section 301.71 is amended by adding paragraph (d) to read as follows:

§ 301.71 Commencement proceedings.

* * * * *

(d) *Digital audio recording devices and media.* In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Tribunal during the month of January or February of each year in accordance with Tribunal regulations.

4. Section 301.72 is amended by adding paragraph (d) to read as follows:

§ 301.72 Determination of controversy.

* * * * *

(d) *Digital audio recording devices and media.* Within 30 days after the last day of February each year, the Tribunal shall determine whether a controversy exists among the claimants of digital audio recording devices and media royalty payments as to any Subfund of the Sound Recording Fund or the Musical Works Fund as set forth in 17 U.S.C. 1006(b) (1) and (2). In order to determine whether a controversy exists, the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of Subpart E. The results of this determination shall be announced in the **Federal Register**. If the Tribunal decides that a controversy exists, the **Federal Register** notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

5. Part 311 is added to read as follows:

PART 311—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

Sec.

311.1 General.
311.2 Time of filing.
311.3 Content of claim.
311.4 Compliance with statutory dates.
311.5 Forms.

Authority: 17 U.S.C. §§ 803(a), 1007(a)(1).

§ 311.1 General.

This part prescribes procedures pursuant to 17 U.S.C. 1007(a)(1), whereby interested copyright parties, as defined in 17 U.S.C. 1001(7), claiming to be entitled to royalty payments made for the importation and distribution in the United States, or the manufacture and distribution in the United States, of digital audio recording devices and media pursuant to 17 U.S.C. 1006, shall file claims with the Copyright Royalty Tribunal.

§ 311.2 Time of filing.

Commencing with January and February, 1993, and during January and February of each succeeding year, every interested copyright party claiming to be entitled to digital audio recording devices and media royalty payments made for quarterly periods ending during the previous calendar year shall file a claim with the Copyright Royalty Tribunal. No royalty payments shall be distributed to any interested copyright party for the specified period unless such interested copyright party has filed a claim to such royalty payments during January or February of the following calendar year. Claimants may file claims jointly or as a single claim. In the absence of an express written authorization to the contrary, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations to file claims to the Musical Works Fund, apart from their standard arrangements, for purposes of this 1992 royalties filing and fee distribution. In the event a member or affiliate of a performing rights society either files individually, or grants express authority to another agent, that action shall supersede the agency inferred by membership in or affiliation with a performing rights society.

§ 311.3 Content of claims.

(a) Claims filed by interested copyright parties for digital audio recording devices and media royalty payments shall include the following information:

(1) The full legal name of the person or entity claiming royalty payments.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) A statement as to how the claimant fits within the definition of interested copyright party specified in 17 U.S.C. 1001(7).

(4) A statement as to whether the claim is being made against the Sound Recordings Fund or the Musical Works Fund, as set forth in 17 U.S.C. 1006(b) and as to which Subfund of the Sound Recordings Fund (i.e., the copyright owners or featured recording artists Subfund) or the Musical Works Fund (i.e., the music publishers or writers Subfund) the claim is being made against as set forth in 17 U.S.C. 1006(b) (1) and (2).

(5) Identification, establishing a basis for the claim, of at least one musical work or sound recording embodied in a digital musical recording or an analog musical recording lawfully made under title 17 U.S.C. that has been distributed (as that term is defined in 17 U.S.C. 1001(6)), and that, during the period to which the royalty payments claimed pertain, has been

(i) Distributed (as that term is defined in 17 U.S.C. 1001(6)) in the form of digital musical recordings or analog musical recordings, or

(ii) Disseminated to the public in transmissions.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or full address of the claimant changes after the filing of the claim, the claimant shall notify the Tribunal of such change within thirty days of the change, or the claim may be subject to dismissal.

(d) If an interested copyright party intends to file claims against more than one Subfund, each such claim must be filed separately with the Copyright Royalty Tribunal. Any claim that purports to file against more than one subfund will be rejected.

§ 311.4 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the months of January or February, or

(b) They are properly addressed to the Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 and they are deposited with sufficient postage with the United States Postal Service and bear a January or February U.S. postmark. Claims dated only with a business meter that are received after the last day of February will not be accepted as having been timely filed. No claim may be filed by facsimile transmission.

§ 311.5 Forms.

The Copyright Royalty Tribunal does not provide printed forms for the filing of claims.

Dated January 27, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–2303 Filed 1–28–93; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Chapter VI

Policy Statement on Eligibility for Funding of Warranties on Heavy-Duty Buses; Clarification

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of policy statement.

SUMMARY: Today's document clarifies the Federal Transit Administration's (FTA) policy on eligibility for capital funding of warranties on heavy-duty buses with a minimum service life of 12 years or 500,000 miles. This notice will assist grantees in interpreting capital grant eligibility for vehicle subsystems and components, by clarifying the definition of a standard warranty.

DATES: This clarification is effective for bus procurements made with funds obligated by FTA after January 1, 1993.

FOR FURTHER INFORMATION CONTACT: George Izumi, Office of Grants Management, 202–366–6475, TDD 202–366–4567.

SUPPLEMENTARY INFORMATION:

Policy Statement Clarification: Funding Eligibility of Warranties on Heavy-Duty Buses

Background and Purpose

The FTA policy concerning eligibility for capital funding of warranties on heavy-duty buses with a minimum service life of 12 years or 500,000 miles previously has been that "standard" warranties are eligible capital costs as part of the purchase of buses, while "extended" warranties are operating costs. Due to difficulties in interpreting this warranty policy, the FTA is issuing this notice to clarify the warranty provisions that are eligible for capital funding.

Scope and Effective Date

This policy applies to all bus procurements made with funds obligated after January 1, 1993.

Summary of Provisions

Complete Bus

The complete bus is warranted and guaranteed to be free from defects due to design or workmanship for one year or 50,000 miles, whichever comes first; beginning on the in-service date or date of acceptance, whichever comes first, for each bus. During this warranty period, the bus shall maintain its structural integrity. The warranty is based on normal operation of the bus under the operating conditions prevailing in the operator's locale.

Subsystems and Components

Specific subsystems and components are warranted and guaranteed to be free from defects and related defects for the following times or mileages:

Item	(Whichever comes first)	
	Years	Mileage
Engine	2	200,000
Transmission	2	100,000
Drive axle	2	100,000
Brake system (excluding friction material)	2	50,000
Air conditioning system	2	(1)
Basic body structure	3	150,000
Structural integrity corrosion	7	350,000

[1] Unlimited.

These warranty levels are recommended, but are not required. However, warranties that exceed the recommended periods are not eligible for capital funds, but may be eligible for operating assistance. The provisions listed above (other than the structural integrity corrosion item) are the same as those listed in the current edition of an April 1977 report issued by the American Public Transit Association, entitled Baseline Advanced Design Transit Coach Specifications, otherwise known as the "White Book".

Issued on: January 19, 1993.

Brian W. Clymer,

Administrator.

[FR Doc. 93–1776 Filed 1–28–93; 8:45 am]

BILLING CODE 4910–57–M

Proposed Rules

Federal Register
Vol. 58, No. 18
Friday, January 29, 1993

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO–225–A45; DA–92–10]

Milk in the Southern Michigan Marketing Area; Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Supplemental notice of public hearing on proposed rulemaking.

SUMMARY: This notice changes the location of a hearing on proposals to amend the pricing provisions of the Southern Michigan Federal milk marketing order and adds an additional proposal to be considered at the hearing. The additional proposal would amend the pool plant definition to include shipments of producer milk to a partially regulated distributing plant when determining the qualifications of pool supply plants.

DATES: The hearing will convene at 9 a.m. on February 17, 1993.

ADDRESSES: The hearing will be held at the Novi Hilton Hotel, 21111 Haggerty Road (I–275 at 8-mile exit), Novi, Michigan 48375, Telephone (313) 349–4000.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Hearing: Issued December 3, 1992, published December 10, 1992 (57 FR 58418).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

This notice is supplemental to the notice of hearing which was issued on December 3, 1992, and published in the **Federal Register** on December 10, 1992 (57 FR 58418). Notice is hereby given that the location of the aforesaid hearing has been changed to the Novi Hilton Hotel, 21111 Haggerty Road (I–275 at 8-mile exit), Novi, Michigan 48375, beginning at 9 a.m. local time, on February 17, 1993, with respect to proposed amendments previously announced and to an additional proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the previously announced proposed amendments, and to the additional proposed amendment hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

In this regard, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposals to be considered at the hearing.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

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

later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1040

Milk marketing orders.

The authority citation for 7 CFR part 1040 continues to read as follows:

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

The proposed amendment, as set forth below, has not received the approval of the Secretary of Agriculture.

Proposed by Michigan Milk Producers Association: Proposal No. 5:

Revise § 1040.7 by adding paragraph (b)(5)(iii) to read as follows:

§ 1040.7 Pool plant.

* * * * *

(b) * * *

(5) * * *

(iii) A partially regulated distributing plant that is neither an other order plant, a producer-handler plant, nor an exempt plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

* * * * *

Copies of this supplemental notice of hearing, the original notice and the order may be procured from the Market Administrator, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel, Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Southern Michigan Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: January 19, 1993.

Daniel Haley,

Administrator.

[FR Doc. 93–1963 Filed 1–28–93; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

RIN 3064–AA01

Powers Inconsistent With Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to remove its regulations which, subject to certain exceptions, prohibits an state nonmember insured bank from doing a surety business; insuring the fidelity of others; engaging in the insuring, guaranteeing or certifying of titles to real estate; and guaranteeing the obligations of others. This action is being proposed as, in the FDIC's opinion, new section 24 of the Federal Deposit Insurance Act (FDI Act) effectively covers this area. That section of the FDI Act limits the "as principal" activities of insured state banks to the activities permissible for national banks unless a state bank obtains the FDIC's consent.

DATES: Comments must be received by March 30, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F–400, 1776 F Street, NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F–402 between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838.]

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC, 20429; Pamela E.F. LeCren, Counsel, (202) 898–3730, Counsel, or Grovetta N. Gardineer, (202) 898–3905, Senior Attorney, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20492; or David K. Horne, (202) 898–3981, Financial Economist, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Part 332 of the FDIC's regulations (12 CFR part 332), "Powers Inconsistent with Purposes of Federal Deposit Insurance Law", prohibits any state nonmember insured bank (except a District bank) from exercising or assuming the power to (1) do a surety business, (2) insure the fidelity of others, (3) engage in the insuring, guaranteeing or certifying of titles to real estate, or (4) guarantee or become surety upon the obligations of others except as provided in § 347.3(c)(1) of the FDIC's regulations (12 CFR 347.3(c)(1)).

Section 347.3(c)(1) provides that a bank's foreign branches may guarantee customer's debts or otherwise agree for their benefit to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies the branch's maximum monetary liability. The guarantee or agreement shall be combined with all standby letters of credit and loans for purposes of applying any limitation on loans that the bank may make.

The general prohibition found in part 332 does not apply to acceptances, endorsements, or letters of credit made or issued in the usual course of the banking business. Nor does the prohibition apply in the case of check guaranty card programs, customer-sponsored credit card programs, and similar arrangements in which a bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers provided that the bank establishes the creditworthiness of the individual before undertaking to guarantee his/her obligations. Additionally, any such arrangements to which any of the bank's principal shareholders, directors, or executive officers are a party must be in compliance with applicable provisions of Federal Reserve Board Regulation O (12 CFR part 215) which pertains to loans to insiders.

Over the years the FDIC has recognized two interpretive exceptions to the general prohibition on a bank acting as a surety or guaranteeing the obligations of others: (1) If the bank has a segregated deposit sufficient in amount to cover the bank's potential liability, or (2) if the bank has a substantial interest in the performance of the transaction.

Part 332 was adopted by the FDIC in 1946 and has remained essentially unchanged since then except for the addition of the language allowing for check guaranty programs and customer-

sponsored credit card programs. Because of recent legislative changes, the FDIC is proposing to eliminate part 332.

On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Act, "Activities of Insured State Banks" (FDI Act, 12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. While much of section 24 is not effective until December 19, 1992, the portions of section 24 dealing with equity investments were effective upon enactment, December 19, 1991. The remaining portions of section 24 dealing with activities of insured state banks and their majority-owned subsidiaries are effective December 19, 1992.

Section 24(a) (12 U.S.C. 1831a(a)) provides that after December 19, 1992, no insured state bank may engage as principal in any type of activity that is not permissible for a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate Federal banking agency and the FDIC determines that the activity would not pose a significant risk to the deposit insurance fund of which the bank is a member.

The FDIC is precluded by section 24 from allowing any insured state bank to underwrite insurance if a national bank could not do so. This general prohibition does not apply, however, in the case of (1) any insured state bank, and any subsidiary of an insured state bank, that provided insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation (see section 24(b)(2)) or (2) any well-capitalized bank that was lawfully providing insurance as principal on November 21, 1991 (see section 24(d)(2)(B)). The insurance underwriting activities of a bank covered by paragraph (d)(2)(B) of section 24 (12 U.S.C. 1831a(d)(2)(B)) are limited under the exception, however, to providing insurance of the same type to residents of the state in which the bank was underwriting insurance on the relevant date, individuals employed in that state, and any person to whom the bank has provided insurance without interruption since such person resided in or was employed in that state.

The FDIC adopted final regulation (12 CFR part 362) implementing the equity investment restrictions of section 24 on October 27, 1992 (57 FR 53213, November 9, 1992) and is elsewhere in today's **Federal Register** proposing an amendment to part 362 which would implement the activity restrictions of section 24.

Given the statutory prohibitions contained in section 24 pertaining to insurance underwriting, and in as much as the FDIC has been given a specific statutory charge to review and approve any as principal activity that an insured state bank may wish to conduct if that activity is not permissible for a national bank, there may no longer be a need to retain part 332 as part of the FDIC's regulations. Removing part 332 would eliminate confusion that may otherwise be created as a result of any overlap between part 332 and section 24.

If part 332 is eliminated, the question of whether or not an insured state bank may conduct any of the activities presently listed in part 332 will be resolved under the provisions of section 24 and part 362.[1] If an activity is one that is not permissible for a national bank, the state bank will not be permitted to engage in the activity unless it meets its capital requirements and the FDIC finds that the activity will not pose a significant risk to the deposit insurance fund. Thus, the FDIC is confident that the removal of part 332 should not have an adverse effect on the deposit insurance fund.

There is the possibility that some activities currently prohibited by part 332 may not be subject to the FDIC's review under part 362 in which case the removal of part 332 would allow some activities to go forward that have been prohibited under the FDIC's regulations for many years. It is the FDIC's opinion, however, that that possibility is limited. For example, (1) national banks are permitted by regulations of the Office of the Comptroller of the Currency to act as surety or guarantor of the obligations of others if the bank holds a segregated deposit or the bank has a substantial interest in the transaction, and (2) section 24 prohibits a state bank from insuring the fidelity of others (it is after all insurance underwriting) except to the extent that a national bank may be able to itself underwrite the fidelity of others. To the extent that any gap would be created by removing part 332, it is worthy of note that Congress did not itself opt to restrict state banks from engaging in activities that are permissible for national banks.[2]

Comment is sought on whether the FDIC should take the above described action. Specifically, the FDIC is interested in receiving the views of any parties who believe that removing part 332 will create a regulatory gap.

Regulatory Flexibility Analysis

The Board of Directors has concluded that the proposed amendment, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not establish any recordkeeping or reporting requirements that necessitate the expertise of specialized accountants, lawyers, or managers. The proposal would in fact make it easier for banks to comply with the FDIC's regulations and the provisions of the FDI Act, may in some instances afford state banks the opportunity to conduct activities previously prohibited, and may afford some banks the opportunity to ask the FDIC's consent to conduct an activity that was previously prohibited. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 12 CFR Part 332

Banks, Banking.

In consideration of the foregoing, the FDIC, under the authority of 12 U.S.C. 1819, hereby proposes to amend chapter III, title 12 of the Code of Federal Regulations as follows:

PART 332—[REMOVED]

1. Part 332 is removed and reserved.

By Order of the Board of Directors.

Dated at Washington, D.C. this 12th day of January, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–1474 Filed 1–28–93; 8:45 am]

BILLING CODE 6714–01–M

[1] Insured state banks are reminded that the FDIC has proposed an amendment to part 362 elsewhere in today's **Federal Register**. That proposal, among other things, carries over the exceptions from part 332 pertaining to guarantees by foreign branches of U.S. banks and customer-sponsored credit card programs.

[2] The FDIC's authority to do so was not affected by section 24, however, as evidenced by paragraph (i) of section 24 which indicates that nothing in section 24 is to be construed as limiting the authority of the FDIC or any other appropriate federal or state regulatory authority to establish conditions or restriction that are more stringent than section 24.

12 CFR Part 333

RIN 3064–AA55

Extension of Corporate Powers

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its regulations on extension of corporate powers to remove a provision that makes certain prohibitions which are applicable to state chartered savings associations applicable to state banks that are members of the Savings Association Insurance Fund (SAIF). SAIF member state banks would thereafter be subject to the restrictions of FDIC regulations on activities and investments of insured state banks in lieu of the restrictions presently found in existing regulations on extension of corporate powers. The FDIC in a related rulemaking published elsewhere in today's **Federal Register** is proposing to amend its regulations which place restrictions on the activities and equity investments of insured state banks and their majority-owned subsidiaries. The effect of this proposed amendment would be to treat SAIF member state banks and Bank Insurance Fund member state banks the same rather than subject the former to any additional, or contrary, restrictions based on insurance fund membership.

DATES: Comments must be received by March 30, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F–400, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F–402 between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838.]

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429; Pamela E.F. LeCren, Counsel, (202) 898–3730, Counsel, or Grovetta N. Gardineer, (202) 898–3905, Senior Attorney, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429; or David K. Horne, (202) 898–3981, Financial Economist, Division of Research and Statistics, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Act, "Activities of Insured State Banks" (FDI Act, 12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. While much of section 24 is not effective until December 19, 1992, the portions of section 24 dealing with equity investments were effective upon enactment, December 19, 1991. The remaining portions of section 24 dealing with activities of insured state banks and their majority-owned subsidiaries are effective December 19, 1992.

Section 24(a) (12 U.S.C. 1831(a)) provides that after December 19, 1992, no insured state bank may engage as principal in any type of activity that is not permissible for a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity would not pose a significant risk to the deposit insurance fund of which the bank is a member.

The FDIC is precluded by section 24 from allowing any insured state bank to underwrite insurance if a national bank could not do so. This general prohibition does not apply, however, in the case of (1) any insured state bank, and any subsidiary of an insured state bank, that provided insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation (see section 24(b)(2)) or (2) any well-capitalized bank that was lawfully providing insurance as principal on November 21, 1991 (see section 24(d)(2)(B)). The insurance underwriting activities of a bank covered by paragraph (d)(2)(B) of section 24 (12 U.S.C. 1831a(d)(2)(B)) are limited under the exception, however, to providing insurance of the same type to residents of the state in which the bank was underwriting insurance on the relevant date, individuals employed in that state, and any person to whom the bank has provided insurance without interruption since such person resided in or was employed in that state.

Paragraph (c) of section 24 (12 U.S.C. 1831a(c)), "Equity Investments by Insured State Banks", provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. Several exceptions to the general prohibition on making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited investments during the divestiture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority-owned subsidiaries and equity investments in qualified low income housing projects.

Section 24(f) (12 U.S.C. 1831a(f)), "Common and Preferred Stock Investment", also effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and which is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragraph (f)(2) creates a limited exception for investments in common or preferred stock listed on a national securities exchange and shares of registered investment companies. The exception allows insured state banks that are located in a state that as of September 30, 1991 permitted the bank to invest in common or preferred stock listed on a national securities exchange (listed stock) or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) (registered shares) which made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire and retain listed stock or registered shares up to a maximum of 100 percent of the bank's capital subject to the FDIC's approval. A bank must file a written notice with the FDIC of its intent to take advantage of the exception and must receive the FDIC's approval before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception provided by paragraph (f)(2). If a bank made investments in listed stock or registered shares during the relevant period that exceed in the aggregate 100 percent of

the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year.

Paragraph (d)(1), "Subsidiaries of Insured State Banks. In General", provides that after December 19, 1992 a subsidiary of an insured state bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity will not pose a significant risk to the deposit insurance fund. As directed by paragraph (d)(2)(A), the FDIC cannot approve any subsidiary of an insured state bank engaging in any insurance underwriting activity that is not permissible for a national bank and which is otherwise not excepted by section 24. Paragraph (d)(2)(B) of section 24 provides an exception for the retention of an equity interest in a subsidiary that was engaged "in a state" in insurance activities "as principal" on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. An exception is also provided for a title insurance subsidiary of an insured state bank if the bank was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law and control of the bank has not changed since June 1, 1991.

Paragraph (e) of section 24 (12 U.S.C. 1831a(e)) indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) (12 U.S.C. 1831a(g)) grants the FDIC the authority to make determinations under section 24 by regulation or order and section 24(i) (12 U.S.C. 1831a(i)) indicates that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent restrictions than those set out in section 24.

The FDIC recently adopted a new part 362 of its regulations implementing the equity investment restrictions of section 24 and is, elsewhere in today's **Federal Register**, proposing an amendment to part 362 that would add a number of provisions to part 362 addressing the activities of insured state banks and their majority-owned subsidiaries.

On April 30, 1991 the FDIC amended its regulations by adding a new § 333.3 to part 333, "Extension of Corporate Powers" (12 CFR 333.3). That section (1) caused state banks that are members of the Savings Association Insurance Fund (SAIF member state banks) to be subject to the conditions and restrictions regarding activities and equity investments to which state savings associations are subject pursuant to section 303.13 of the FDIC's regulations (12 CFR 303.13); (2) subjected SAIF member state banks to the loan to one borrower limits found in section 5(u) of the Home Owners' Loan Act (HOLA, 12 U.S.C. 5(u)); (3) required SAIF member state banks to deduct from their capital any investments in a subsidiary if a savings association would be required to do so under section 5(t)(5) of HOLA (12 U.S.C. 1464(t)(5)); (4) subjected SAIF member state banks to the additional restrictions on transactions with affiliates found in section 11 of HOLA (12 U.S.C. 1468); (5) required SAIF member state banks to provide the FDIC notice before acquiring or establishing a subsidiary or engaging in a new activity through an existing subsidiary (see § 303.13(f) of the FDIC's regulations (12 CFR 303.13(f)); and (6) required any savings association that converted to a SAIF member state bank to file a capital plan if upon conversion the bank did not meet the minimum capital requirements set out in part 325 of the FDIC's regulations (12 CFR part 325).

Section 303.13 was adopted by the FDIC on December 12, 1989 (54 FR 53540, December 29, 1989) in order to implement section 28 of the FDI Act (12 U.S.C. 1831e) which placed certain prohibitions on the activities and equity investments of state savings associations. Section 28 was added to the FDI Act as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA, Pub. L. 101–73, 103 Stat. 183 (1989)). Section 28 of the FDI Act and § 303.13 of the FDIC's regulations (12 CFR 303.13) prohibit state chartered savings associations from acquiring or retaining any equity investment of a type or in an amount that is not permissible for a federal savings association. State savings associations are also prohibited from engaging as principal in any activity that is not permissible for a federal savings association unless the association meets its fully phased-in capital requirements and the FDIC determines that the activity will not pose a significant risk to the deposit insurance fund.

If a state savings association meets its fully phased-in capital requirements and the FDIC determines that there is not a significant risk to the deposit insurance fund, a state savings association may acquire or retain an equity investment in a service corporation that would not be permissible for a federal savings association. Equity investments acquired prior to August 8, 1989 that are prohibited investments must be divested as quickly as prudently possible but in no event later than July 1, 1994. The FDIC may set conditions and restrictions governing the retention of the prohibited equity investments during the divestiture period.

The restrictions described above which are found in the various provisions of HOLA were also added to federal statute by FIRREA as was the requirement that savings associations give the FDIC prior notice before acquiring or establishing a subsidiary or conducting new activities through a subsidiary (see section 18(m) of the FDI Act, 12 U.S.C. 1828(m)).

It was the determination of the FDIC's Board of Directors when section 333.3 was adopted that savings associations which convert to state chartered banks and retain their membership in SAIF should continue to be subject to the safeguards enacted by FIRREA. The action was found necessary by the Board of Directors to protect SAIF from harm in view of state laws which might be lax. At the same time, however, the Board of Directors indicated that it was not its intent to permanently establish two classes of state banks that would be treated differently based upon their membership in a particular deposit insurance fund. The FDIC subsequently undertook a review of the issue of expanded bank powers with the hopes of proposing a regulation applicable to all state banks. Before the FDIC could publish a proposal, however, Congress enacted FDICIA along with the provisions of section 24 concerning activities and equity investments.

In light of the enactment of section 24 of the FDI Act, the FDIC amended § 333.3 to allow state banks to be governed by the equity investment provisions of that section and any regulations adopted by the FDIC pursuant thereto (57 FR 53211, November 9, 1992). That amendment did not address the issue of bank activities nor the other restrictions imposed by § 333.3 which are based primarily on sections of HOLA.

The FDIC is now proposing to amend part 333 by removing § 333.3 in its

entirety. It is the FDIC's considered opinion that it was the intent of congress to treat all banks alike regardless of which insurance fund they are a member. By removing § 333.3, the FDIC would be implementing that intent. As to the other restrictions that would be eliminated if § 333.3 is removed (i.e., those rooted in the provisions of HOLA and section 18(m) of the FDI Act) congress could have imposed on all state banks a loan to one borrower limit, additional affiliate transactions restrictions, prior notice of the acquisition or establishment of any subsidiary, and capital deductions on investments in certain subsidiaries but did not do so when it enacted FDICIA. That Congress did not require that such restrictions be imposed does not preclude the FDIC from imposing those, or similar, restrictions, provided that there is a safety or soundness basis to do so. (In fact, the FDIC has proposed to amend part 362 of the FDIC's regulations to require banks to deduct their investments in subsidiaries in certain instances.) The Board of Directors is, however, presently of the opinion given the enactment of section 24 and the various regulatory reforms such as the prompt corrective action provisions of the FDI Act (12 U.S.C. 38) which were part of FDICIA, that removing the additional restrictions on SAIF member state banks should not pose a threat to the SAIF fund. In fact, SAIF member state banks can be expected to benefit from the amendment as it will alleviate an existing competitive disparity and remove certain additional compliance burdens.

In addition to any other comments on the proposal, the FDIC is interested in receiving comment on the propriety of eliminating section 333.3 in its entirety. Should the FDIC consider amending section 333.3 so as to make SAIF member state banks subject only to the activities and restrictions of part 362 of the FDIC's regulations and leave the remainder of the section in tact? If so, why?

Regulatory Flexibility Analysis

The Board of Directors has determined that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. The amendment will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers or managers that small institutions are less likely to have absent hiring additional employees or obtaining these services from outside vendors. On the contrary, the proposed amendment will relieve what may be perceived as a burden on SAIF member state banks (both large and small) in that they are currently subject to a different set of rules regarding their activities than that to which Bank Insurance Fund member state banks (BIF) are subject. As a result of that fact SAIF member state banks are currently subject to a number of additional restrictions and compliance burdens to which BIF member state banks are not subject. SAIF member state banks are presently required to comply with the most restrictive rule and therefore must determine which rule is in fact the more restrictive. This amendment would relieve that burden and place SAIF member state banks on a par with BIF member state banks.

As the proposed amendment will not have a disparate economic impact on small institutions, the FDIC was not required to conduct a Regulatory Flexibility Act analysis. (See section 605 of the Regulatory Flexibility Act (5 U.S.C. 605)).

List of Subjects in 12 CFR Part 333

Banks, banking, Corporate powers, Trusts and trustees.

In consideration of the foregoing, the FDIC hereby proposes to amend chapter III, title 12 of the Code of Federal Regulations by amending part 333 as follows:

PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for part 333 is proposed to be revised as follows:

Authority: 12 U.S.C. 1816, 1818, 1819.

§ 333.3 [Removed]

2. Section 333.3 is removed.

By Order of the Board of Directors.

Dated at Washington, D.C. this 12th day of January, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–1475 Filed 1–28–93; 8:45 am]

BILLING CODE 6714–01–M

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12 CFR Part 362

RIN 3064–AA29

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its regulations governing the activities and investments of insured state banks. The proposal implements new section 24 of the Federal Deposit Insurance Act (FDI Act). Under the proposal, an insured state bank must obtain the FDIC's prior consent before directly, or indirectly through a subsidiary, engaging "as principal" in any activity that is not permissible for a national bank. The proposal establishes a number of exceptions to the general prohibition, sets out application procedures for requesting FDIC's consent; sets out standard conditions on approval that will be imposed unless otherwise waived; identifies "as principal" activities for which the FDIC will not give its consent; and delegates the authority to act on applications to the Director of the Division of Supervision and the Director's designee.

DATES: Comments must be received by March 30, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F–402, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. [FAX number: (202) 898–3838.] Comments may be inspected in FDIC's Reading Room, room 7118, 550 17th Street NW. between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; Pamela E.F. LeCren, Counsel, (202) 898–3730, or Grovetta N. Gardineer, Senior Attorney, (202) 898–3905, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429; or David K. Horne, Financial Economist, (202) 898–3981, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for

the Federal Deposit Insurance Corporation, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–453, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The collection of information in this regulation is found in §§ 362.4(c)(2) (ii), (iii), and (iv), and 362.4(c)(3)(ii) and takes the form of an application for consent to directly or indirectly through a subsidiary engage as principal in any activity that is not permissible for a national bank or a subsidiary of a national bank; an application for consent to continue an ongoing activity that is otherwise impermissible; and a notice of intent to either discontinue an ongoing activity that is being conducted through a subsidiary for which consent to continue the activity has been denied or, in the alternative, a plan covering the divestiture of the bank's equity investment in that subsidiary. The information will be used to fulfill the FDIC's responsibilities under section 24 of the FDI Act to ensure that no insured state bank directly or indirectly engages as principal in any activity that is not permissible for a national bank unless that activity will not present a significant risk to the deposit insurance funds.

The estimated annual reporting burden for the collection of information requirement in the regulation is summarized as follows:

Application to Directly Engage as Principal in Activity Not Permissible for a National Bank

Number of Respondents: 390
Number of Responses Per Respondent: 1
Total Annual Responses: 390
Hours Per Response: 12
Total Annual Burden Hours: 4,680

Application to Indirectly Engage as Principal in Activity Not Permissible for a National Bank

Number of Respondents: 390
Number of Responses Per Respondent: 1
Total Annual Responses: 390
Hours Per Response: 12
Total Annual Burden Hours: 4,680

Application to Directly Continue Activity

Number of Respondents: 5
Number of Responses Per Respondent: 1
Total Annual Responses: 5
Hours Per Response: 12
Total Annual Burden Hours: 60

Application to Indirectly Continue Activity

Number of Respondents: 5
Number of Responses Per Respondent: 1
Total Annual Responses: 5
Hours Per Response: 12
Total Annual Burden Hours: 60

Divestiture Plan or Notice to Discontinue Indirect Activity for Which Continuation Has Been Denied

Number of Respondents: 70
Number of Responses Per Respondent: 1
Total Annual Responses: 70
Hours Per Response: 6
Total Annual Burden Hours: 420

Background

On December 19, 1991, the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236) was signed into law. Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act, 12 U.S.C. 1831a). With certain exceptions section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to activities and equity investments that are permissible for national banks. On July 9, 1992 the FDIC's Board of Directors sought comment for thirty days on a proposed rule, implementing the equity investment restrictions of section 24 (proposed part 362, 57 FR 30435). Part 362 was adopted in final form on October 27, 1992 (57 FR 53213, November 9, 1992). This proposed amendment would add new provisions to part 362 addressing "activities" of insured state banks and their subsidiaries.

At the same time the FDIC proposed to add new part 362 to its regulations, the FDIC proposed to amend § 333.3 of the FDIC's regulations, "Savings Association Insurance Fund (SAIF) member state banks formerly savings associations", (12 CFR 333.3). That proposal sought comment on amending § 333.3 so as to relieve SAIF member state banks from the restrictions of § 333.3 insofar as that regulation made SAIF member state banks subject to the equity investment restrictions applicable to savings associations found in § 303.13 of the FDIC's regulations (12 CFR 303.13). By proposing the amendment, the FDIC sought comment on eliminating what was then a disparate treatment among banks as to their equity investments based upon deposit insurance fund membership. The proposed amendment to § 333.3 was adopted without change. (57 FR 53211, November 9, 1992).

Other portions of § 333.3 which concern "activities" of SAIF member state banks and address issues such as loans to one borrower limits, transactions with affiliates, and investments in "junk bonds", were not affected. The FDIC is today, elsewhere in the **Federal Register**, proposing to eliminate § 333.3 in its entirety. That amendment would cause SAIF member state banks to be treated in the same fashion as any other insured state bank insofar as equity investments and activities are concerned and would relieve SAIF member state banks from other restrictions found in § 333.3 which parallel restrictions to which savings associations are subject. A full discussion of the FDIC's proposal regarding § 333.3 can be found elsewhere in today's **Federal Register**.

The FDIC is also proposing elsewhere in today's **Federal Register** to remove part 332 from title 12 of the Code of Federal Regulations. Part 332 of the FDIC's regulations (12 CFR part 332, "Powers Inconsistent With Purposes of Federal Deposit Insurance Law") prohibits any state nonmember insured bank (except a district bank) from doing a surety business, insuring the fidelity of others, engaging in the insuring, guaranteeing or certifying of titles to real estate, and guaranteeing or becoming surety upon the obligations of others except as provided in § 347.3(c)(1) of FDIC's regulations (12 CFR 347.3(c)(1)). These limitations do not apply to acceptances, endorsements, or letters of credit made or issued in the usual course of the banking business and do not apply in the case of check guaranty card programs or customer-sponsored credit card programs and similar arrangements provided that certain restrictions are met. The FDIC has also recognized on an interpretive basis a number of other exceptions to the general prohibition on acting as guarantee or surety. If part 332 is removed, the provisions of part 362 will govern whether or not a state nonmember insured bank is permitted to enter into any of the above activities. A full discussion of the proposed removal of part 332 can be found elsewhere in today's **Federal Register**.

A description of section 24 of the FDI Act and the proposed amendment to part 362 follows.

Description of Statute

As indicated above, with certain exceptions, section 24 of the FDI Act as added by FDICIA limits the activities and equity investments of state chartered insured banks to activities and equity investments that are permissible for national banks.

Section 24(a) provides that, after December 19, 1992, no insured state bank may engage as principal in any type of activity that is not permissible for a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the

activity would not pose a significant risk to the deposit insurance fund of which the bank is a member.

The FDIC is precluded under the statute from allowing any insured state bank to underwrite insurance if a national bank could not do so. This general prohibition does not apply, however, in the case of: (1) Any insured state bank, and any subsidiary of an insured state bank, that provided insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation (see section 24(b)(2)), or (2) any well-capitalized bank that was lawfully providing insurance as principal on November 21, 1991 (see section 24(d)(2)(B)). The insurance underwriting activities of a bank covered by paragraph (d)(2)(B) of section 24 are limited under the exception, however, to providing insurance of the same type to residents of the state in which the bank was underwriting insurance on the relevant date, individuals employed in that state, and any person to whom the bank has provided insurance without interruption since such person resided in, or was employed in, that state.

Paragraph (c) of section 24, "Equity Investments by Insured State Banks", provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. Paragraph (c) was effective on December 19, 1991. Several exceptions to the general prohibition to making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event any later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited investments during the divestiture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority-owned subsidiaries and equity investments in qualified low income housing projects.

Section 24(f), "Common and Preferred Stock Investment", also effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and which is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragraph (f)(2) creates a limited exception for investments in common or preferred stock listed on a national securities exchange and shares of registered investment companies. The exception allows insured state banks that (a) are located in a state that as of September 30, 1991 permitted the bank to invest in common or preferred stock listed on a national securities exchange (listed stock) or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) (registered shares), and (b) made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire and retain listed stock or registered shares up to a maximum of 100 percent of the bank's capital subject to the FDIC's approval. A bank must file a written notice with the FDIC of its intent to take advantage of the exception and must receive the FDIC's approval before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception provided by paragraph (f)(2). If a bank made investments in listed stock or registered shares during the relevant period that exceed in the aggregate 100 percent of the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year.

Paragraph (d)(1), "Subsidiaries of Insured State Banks. In General", provides that after December 19, 1992, a subsidiary of an insured state bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity will not pose a significant risk to the fund. As directed by paragraph (d)(2)(A), the FDIC cannot allow any subsidiary of an insured state bank to engage in any insurance underwriting activity that is not permissible for a national bank and which is otherwise not excepted by section 24. Paragraph (d)(2)(B) of section 24 provides an exception for the retention of an equity interest in a subsidiary that was engaged "in a state" in insurance activities "as principal" on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. An exception is also provided for a title insurance subsidiary of an insured state bank if the bank was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law and control of the bank has not changed since June 1, 1991.

Paragraph (e) of section 24 indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) grants the FDIC the authority to make determinations under section 24 by regulation or order and section 24(i) indicates that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent restrictions than those set out in section 24.

Description of Proposal and Request for Comments

This proposed amendment to part 362 supplements the action recently taken by the FDIC's Board of Directors to promulgate a regulation governing the equity investments of insured state banks as circumscribed by section 24 of the FDI Act. The proposal does not substantively alter in any way part 362 as adopted by the Board. The proposal does, however, add provisions to part 362 addressing the conduct as principal by an insured state bank and its subsidiaries of activities that are not permissible for a national bank. The proposed amendment sets out relevant definitions and establishes an applications procedure whereby an insured state bank may request the FDIC's consent to engage as principal in activities that are not permissible for a national bank or a subsidiary of a national bank. The proposal allows a bank or its subsidiaries in certain instances to engage in an otherwise impermissible activity without seeking the FDIC's consent if certain conditions are met. If a bank must seek the FDIC's consent under the proposal, certain "standard conditions" will be imposed on approval unless specifically waived. The proposal allows insured state banks the flexibility to seek the FDIC's permission to engage in any otherwise impermissible activity with one notable exception. Under the proposal an insured state bank will not be granted permission to directly conduct any commercial venture. The proposal is discussed at length below.

Alternate Approaches

Two provisions of the statute were instrumental when staff was considering the most appropriate framework to implement the activities provisions of section 24: Section 24(a) and section 24(g). As has been previously outlined, section 24(a) provides that an insured state bank may not engage as principal in any type of activity that is not permissible for a national bank unless the FDIC has determined that the activity would pose no significant risk to the appropriate deposit insurance fund, and the state bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency. Section 24(g) provides that the FDIC shall make determinations under this section by regulation or order.

It is clear that the FDIC's mandate under this statute is to assure that activities conducted by insured state banks do not pose a risk to the insurance funds. In dealing with this mandate, staff explored several options on just how the FDIC should go about determining whether particular activities pose a risk to the fund. One option is to look at state statutes, determine which activities allowed in the state are covered by the provisions of section 24, and make a judgment by order, in effect "certify" as to whether the power as exercised in that particular state provides the insurance funds with adequate protection. Staff rejected this approach for two reasons. In making a determination based on state law, the FDIC would not be looking at the interaction of the condition and management of the bank and the power to be conducted. Some activities may be acceptable for a financially strong and well-managed institution that may not be acceptable for an institution that is in a weakened financial condition with less than satisfactory management. In addition, the FDIC would be required to continually review in any event any changes to state law and regulation to determine whether those changes affect the agency's initial "certification".

Another option considered by staff was to allow section 24 to stand on its own without any implementing regulation. That option was rejected, however, as it was staff's opinion that a regulation would provide needed guidance to banks and would speed the consideration of applications. Additionally, by having an implementing regulation the FDIC can in effect "preapprove" certain activities thereby eliminating the need for some applications. Comment is requested on whether this option should have been rejected or not. In short, rather than proceeding with a regulation, should the FDIC proceed solely on a case-by-case application basis?

Staff also considered providing through regulation a list of activities that are deemed to be a significant risk to the insurance funds. This option, while somewhat appealing from an administrative standpoint, was also rejected. This procedure would require the FDIC to make determinations on a class of activity without considering the differing ways of engaging in the activity or the condition or management of the bank engaging in the activity. This approach may work for a few activities which are clearly incompatible with banking, but would fail to address the realm of possible powers that might be exercised. By not incorporating up front a lengthy list of activities found to present a significant risk under all circumstances, the proposal allows banks and the FDIC the flexibility of assessing each situation on its own merit.

The agency recognizes that this approach could be criticized as placing an applications burden on the industry in contrast to recent initiatives to reduce regulatory burden. Staff believes that this process ultimately provides efficiency for the industry as the agency's positions are open for public comment and the banking industry is given an agency decision before incurring the costs of starting an activity.

Staff has incorporated into the proposed regulation the concept of "firewalls". "Firewalls" refers to those corporate formalities which produce an economic and market place perception of separateness between related corporations and which provide the legal basis to protect the insured bank from the liabilities of its affiliated organizations. The concept of adequate safeguards was first introduced by regulation by the FDIC in 1984 with the adoption of § 337.4 of the FDIC's regulations which deals with securities activities of subsidiaries of insured nonmembers banks and, in 1987, the effectiveness of legal separations was examined in an FDIC report entitled Mandate for Change. Thus, the reliance on "firewalls" by the FDIC to provide some degree of insulation from risk is not new. We are asking, however, for specific comment concerning the effectiveness of firewalls and their appropriateness as a method of reducing risk to an insured bank and ultimately the risk to the insurance funds. If firewalls are deemed ineffective, what alternate methods to protect the insurance funds from the liabilities associated with the activities of subsidiaries of insured state banks should the FDIC pursue?

Definitions

1. Activity Permissible for a National Bank

§ 362.2(b) of the proposed regulation provides that the phrase "activity permissible for a national bank" means any activity that is authorized for a national bank under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute. The FDIC will consider regulations issued by the Office of the Comptroller of the Currency (OCC); any official circular or bulletin issued by the OCC; or any order or written interpretation issued by the OCC as evidence of what is and is not permissible for a national bank. This proposed definition is the same as the definition of the phrase "equity investment permissible for a national bank" that is currently found in § 362.2(h) of part 362. (Under the proposal, § 362.2(h) would be redesignated as § 362.2(o).) It is the FDIC's intent to recognize OCC staff interpretations as evidence of what is a permissible activity for a national bank provided that the interpretation is considered to be valid by the OCC. A staff opinion will not be recognized if it is not the current opinion of the OCC, i.e., it is no longer considered valid, the opinion has been overruled by the OCC, or the opinion is found by a court of law to be incorrect.

In addition to inviting comment on the proposed definition as described above, comment is also invited on whether, under the law as written, section 24 incorporates any amount limitations on otherwise permissible activities. For example, if a national bank's authority to invest in bonds or commercial paper is limited to a certain amount, does section 24 require a state bank to obtain the FDIC's prior consent before making investments in bonds or commercial paper to the full extent authorized under state law if state law authorizes a bank to make such investments to a greater extent than a national bank? In this regard, it should be noted that section 28 of the FDI Act (12 U.S.C. 1831e) which governs activities and equity investments of state savings association and generally limits those activities and investments to what is permissible for a federal savings association expressly requires the FDIC to give its consent before a state savings association may exceed an amount limitation placed on federal savings associations for authorized activities.

2. Activity

Section 362.2(a) of the proposed regulation defines the term "activity" to mean the authorized conduct of business by an insured state bank. The term "activity" as used in the proposal in connection with a bank itself is to be understood to include acquiring or retaining any investment other than an equity investment. Direct equity investments by insured state banks are subject to paragraphs (c) and (f) of Section 24 and the provisions of part 362 that expressly deal with equity investments. It is the previously expressed opinion of the FDIC that Section 24 treats direct equity investments by state banks in a separate and distinct fashion from other activities undertaken directly by state banks. (See, 57 *FR* 30436, July 9, 1992.) It is the opinion of the FDIC on the other hand that Section 24(d) of the FDI Act governs the activities and equity investments of majority-owned subsidiaries of insured state banks. Therefore, the proposed regulation indicates that, as used in connection with the conduct of business by a subsidiary of an insured state bank, the term "activity" is to be understood to include acquiring or retaining any investment, including any equity investment.

The definition of "activity" set out in the proposal is intended to be very broad. For example, "activity" as used herein includes entering into a contract, making an investment, making loans, issuing debt, offering safe deposit boxes, etc. It is not contemplated, however, that loan to one borrower limits, insider loan limits, interest rate ceilings, restrictions on shared management, minimum number of directors and other similar generalized restrictions on the business of banking will be considered to be "activities". This position is consistent with the position adopted by the FDIC in applying the restrictions under Section 28 of the FDI Act.

Insured state banks should be aware that it is the FDIC's present posture that in order for a state bank to conduct an activity as principal without the FDIC's consent, the activity must be conducted in the same manner in which a national bank is authorized to conduct the activity. In short, if a national bank is authorized by regulation to engage in an activity but only subject to certain conditions or restrictions, generally speaking, a state bank must abide by those conditions or restrictions if the bank wishes to conduct the activity without first obtaining the FDIC's consent. In as much as a national bank would not be able to conduct the activity in question other than in compliance with the conditions or restrictions, if any, established by the OCC, those conditions and restrictions are certainly relevant in determining what is and is not permissible for a national bank. This position is consistent with that taken by the FDIC in applying section 28 of the FDI Act (see, FDIC staff opinion letter 90–25, July 6, 1990).

Under this position an activity should be presumed to require the FDIC's prior consent based upon conditions or restrictions found in OCC regulations, circulars, staff opinions, etc.[1] The inquiry does not necessarily stop there, however. The FDIC may determine that the differences in the way in which the state allows a bank to conduct the activity are immaterial in terms of risk. If the FDIC makes such a determination, the bank's application will be returned as unnecessary. If this occurs, the FDIC would have in essence determined that the differences allowed for by state law are so immaterial that the two activities should be considered one and the same for the purposes of Section 24.

Comment is specifically invited on whether the FDIC should consider a definition of the term "activity" that is less expansive than the one described above. The FDIC also invites comment on the above described posture on the issue of conditions or restrictions contained in OCC regulations, circulars, interpretive letters, etc. In that vein, comment is sought on whether the FDIC should consider any real estate lending guidelines established by the OCC pursuant to the authority of section 18 (o) of the FDI Act (12 U.S.C. 1828(o)) to be applicable to subsidiaries of insured state banks as a result of section 24 of the FDI Act. If such were to be the case, a subsidiary of an insured state bank would be required to obtain the FDIC's prior consent before exceeding the loan to value ratios etc. set out in the OCC's real estate lending guidelines.

3. Affiliate

The term "affiliate" as used in the proposal has the same meaning as found in § 337.4 of the FDIC's regulations (12 CFR 337.4) i.e., any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state bank.

[1] It is not the FDIC's intent, however, to carry over restrictions or conditions that address safety and soundness issues and which are imposed by the OCC in its discretion as such restrictions go to the manner in which an activity must be conducted to be safe and sound and do not necessarily pertain to whether the activity is an authorized activity.

4. As Principal

Section 362.2(d) of the proposal defines "as principal" to mean acting other than as agent for a customer, acting as trustee, or conducting an activity in a brokerage, custodial or advisory capacity. Under the definition as proposed, for example, acting as agent for the sale of insurance, agent for the sale of securities, or agent for the sale of real estate would not be an "as principal" activity nor would acting as agent in arranging for travel services. Likewise, providing safekeeping services, providing personal financial planning services, and acting as trustee activities would not involve "as principal" activities.

In contrast, real estate development, insurance underwriting, issuing annuities, and securities underwriting would constitute "as principal" activities.

The impact of the definition under the proposal is as follows. For example, as travel agency activities are not conducted "as principal", an insured state bank may, without the FDIC's consent under part 362, act as travel agent even though a national bank is not permitted to act as travel agent. (State banks should of course note that the state bank must have the authority under state law to act as a travel agent.) Even though the activity is not one that is authorized to a national bank, the state bank would not be acting "as principal" in conducting the activity and, thus, neither Section 24 of the FDI Act nor Part 362 would apply. The proposed definition is consistent with passages in the legislative history of Section 24 of the FDI Act which give as examples of "as principal" activities securities underwriting, equity ownership, real estate ownership and development, and insurance underwriting and which contrast those activities with less risky agency powers in securities, real estate and insurance. H.R. Rep. 102–167, 102d Cong., 1st Sess., 49–50 (1991).

Comment is specifically requested on whether the definition as proposed should be expanded in some fashion. In the alternative, is the definition as proposed overly broad?

5. Bona Fide Subsidiary

The term "bona fide subsidiary" as used in the proposal has essentially the same meaning as found in § 337.4(a)(2) of the FDIC's regulations. Under the proposal, "bona fide subsidiary" means a subsidiary of an insured state bank that at a minimum: (i) Is adequately capitalized; (ii) is physically separate and distinct in its operations from the

operation of the insured bank; (iii) maintains separate accounting and other corporate records; (iv) observes separate corporate formalities such as separate board of directors' meetings; (v) maintains separate employees who are compensated by the subsidiary, however, this requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and recordkeeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to those agreed to by independent entities; (vi) shares no common officers with the insured bank; (vii) has, as a majority of its board of directors, persons who are neither directors nor officers of the insured bank; and (viii) conducts business pursuant to independent policies and procedures designed to inform customers, and prospective customers, of the subsidiary that the subsidiary is a separate organization from the insured bank.

The proposed definition of "bona fide subsidiary" includes elements typically used by courts in determining whether or not an entity is the alter ego of another corporation. The definition is intended to ensure the separateness of the subsidiary and the insured state bank. As noted above, the proposed regulation expressly contains a restriction on shared management and requires the use of separate employees in customer contact positions. These restrictions are viewed as important factors in maintaining the separate corporate identities of the subsidiary and the insured bank in the eyes of the parties with whom the institution and the subsidiary deal. The use of "back office" employees of the insured bank by the subsidiary is considered appropriate as this arrangement reduces inefficiency and the added cost that might otherwise result. Comment is specifically requested on the propriety of these restrictions as well as the costs (including inefficiency) associated with the restrictions on shared management.

The proposed definition requires that the operations of the subsidiary be physically separate and distinct in order for the subsidiary to be bona fide. The FDIC's intent is to be flexible in assessing whether or not the subsidiary operates in a fashion so as to make the public aware that it is dealing with a subsidiary and not the insured bank itself. It is to this end also that the definition requires that the subsidiary conduct business pursuant to independent policies and procedures so that the subsidiary's customers are aware that the subsidiary is a separate organization, and that investments, assets, products or services which are recommended, offered or sold by it are not deposits, are not FDIC insured, etc.

Whether or not a subsidiary is set up with adequate capital is a central factor when assessing whether or not a parent will be held liable for the obligations and acts of its subsidiary. Adequate capital is also very important from a safety and soundness point of view as a parent institution is less likely to be harmed if its subsidiary has adequate capital. Adequate capital will enable the subsidiary to absorb its losses as well as any liabilities arising from its operation without having to look to its parent.

The FDIC will look to industry standards in order to determine if the subsidiary is adequately capitalized. The FDIC still intends to reserve the option of requiring that the subsidiary have capital over and above any industry standard if the FDIC at any time finds such requirement to be warranted. It is the FDIC's intention to make this determination during the application process or notice period, and to inform the institution whether, in the FDIC's opinion, the capital position of the subsidiary is adequate. It is the FDIC's belief that such a flexible approach will better serve the FDIC's supervisory interest of insuring the safety and soundness of insured depository institutions. Comment is specifically requested on methods the FDIC can use to determine the adequacy of a subsidiary's capital.

6. Department

The proposal defines the term "department" as a division of a bank that satisfies five requirements designed to create separation between the division and the remainder of the bank. The FDIC has found that some banks presently have departments that conduct activities which are not permissible for national banks. This is particularly true in Connecticut and New York where a number of savings banks underwrite life insurance and annuities through a department of the bank. In Delaware, insurance underwriting of all types (except title insurance) has been authorized in a department or division of the bank.

The FDIC reviewed the types of separations that exist between banks and departments where presently allowed for and evaluated those separations in the context of the separations commonly referred to as "firewalls". The state laws in some states which allow savings bank life insurance underwriting are very similar in delineating the required separations between banks and their life insurance departments. The proposed regulation draws from these similarities and requires that: (1) The department be physically distinct from the remainder of the institution, (2) the department maintains separate accounting and other records, (3) the department's assets, liabilities, obligations and expenses are separate and distinct from those of the remainder of the institution, (4) the department is liquidated separately from the other divisions of the institution, and (5) statute requires that the obligations, liabilities, and expenses of the department can only be satisfied with the assets of the department.

It is the intent of the FDIC in defining the separation between a bank and its department that the department not be confused with the remaining operations of the insured bank. If the department is separate, supervision of the activity by any organization which has responsibility for supervising the type of activity conducted by the department will be easier. The criteria necessary for an adequate separation are discussed more fully below.

(a) Physically Distinct

The term physically distinct does not necessarily mean that the department must be totally separate from the operations of the insured bank, however, areas of operation of the department must be recognizably different. This test could be satisfied in many ways, *e.g.*, a separate site for department operations or making a clear distinction within the bank itself concerning the location of the department's operations.

(b) Separate Accounting and Records

Requiring separate records and accounts will help clarify which assets are available to meet the obligations of the department and allows for a better indication of profitability of the operation. The FDIC recognizes that certain expenses may be shared between a bank and its department; however, any such sharing arrangement should reflect a reasonable estimation of the department's portion of the expense. The requirement to have separate accounting and other records should not be interpreted to preclude the inclusion of the department's net income in the operating results of the combined institution. As departments that engage in activities such as insurance underwriting may well be subject to different accounting standards than the remainder of the institution (as well as different regulatory requirements), the FDIC anticipates that most institutions would as a matter of course maintain

separate accounts and records for the department.

(c) Satisfaction of Department Liabilities/Separate Liquidation

A measure of protection to the bank is provided in the case of insolvency of the department by requiring that the obligations, liabilities, and expenses of the department can only be satisfied with the assets of that department. This standard, which has been in place in the savings bank life insurance departments in Connecticut and New York for a number of years, allows the insolvency of the insurance operation to be handled by the state insurance regulator without a call on the resources of the FDIC. The standard that the department be liquidated separately from the other divisions of the institution allows the division to fail without impairing the operations of the insured institution.

7. Commercial Venture

Section 362.4(a)(2) of the proposed regulation provides that the FDIC will not permit an insured state bank to directly engage in any commercial venture. Section 362.2(f) of the proposal in turn defines "commercial venture" to mean being engaged in the conduct of any activity other than the providing of financial services. "Financial services" is to be understood for the purposes of the proposed regulation to specifically include the supplying of funds or capital; the granting of credit; the management of funds or the making of investments for or on behalf of businesses, groups or individuals; transaction services which involve facilitating payments and transfers of funds such as processing payments, clearing payments, and currency exchange; the production or distribution of financial instruments including the underwriting and sales of debt and equity securities and derivative financial instruments as well as options that represent future claims against financial instruments; the production or distribution of information pertaining to the credit markets; and insuring against risk of loss. The regulation also provides, however, that financial service can include any service which is determined by the FDIC to qualify as a financial service. This language is contained in the proposed regulation for the purpose of ensuring flexibility. It is contemplated that determinations as to whether a service that is not specifically listed in the regulation qualifies as a financial service will be made in the context of an application by a bank seeking the FDIC's approval to directly conduct the service in question. Presumably the applicant bank would argue that even though the activity in question does not fall within the scope of any of the services listed in the regulation as financial services, the service should be considered a financial service and the provision of the regulation absolutely prohibiting the bank from directly conducting that activity should not operate to bar the bank's application.

As the FDIC found it difficult to craft a definition of commercial venture, the agency opted to simply define commercial venture as anything that is not financial in nature. The agency recognizes that defining financial service is itself complicated and therefore is specifically seeking comment on what has been proposed as a description of what should be understood as financial in nature. Should the definition be expanded or contracted in any way or is the flexibility built into the definition sufficient to address any concerns?

8. Extension of Credit

The term "extension of credit" as defined in the proposal shall have the same meaning as used for the purposes of § 337.3 of the FDIC's regulations. The cross reference to § 337.3 should be understood to encompass the exceptions as well. As defined for the purposes of § 337.3, "extension of credit" means the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes, but is not limited to:

(a) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) Issuance of a standby letter of credit (or other similar arrangement regardless of name or description);

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which an insider may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(f) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (A) accrued interest or (B) taxes, insurance or other expenses incidental to the existing indebtedness;

(g) An advance of unearned salary or other unearned compensation for a period in excess of 30 days; and

(h) Any other similar transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

9. Investment in a Department

The proposal contains a definition of "investment in a department" by an insured state bank. The definition, which is contained in § 362.2(r), merely moves language which had been found in the definition of well-capitalized. No substantive change has been made. Under the definition, an investment in a department means any transfer of funds by an insured state bank to one of its departments which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by that department shall not be considered an investment in the department.

10. Investment in a Subsidiary

Under the proposal the term "investment in subsidiary" is set out as a separate definition. The language, which had been part of the well-capitalized definition, has simply been moved into proposed § 362.2(s). No substantive changes have been made. The term "investment in a subsidiary" by an insured state bank as contained in § 362.2(s) means the total of any equity investment in a subsidiary by a bank plus any debt issued by the subsidiary that is held by the insured state bank.

General Prohibition on Engaging as Principal in Activities That are not Permissible for a National Bank

Section 362.4(a)(1) of the proposal tracks section 24(a) of the FDI Act. Section 363.4(a)(1) provides that, unless the FDIC gives its consent and unless otherwise excepted, after December 19, 1992, an insured state bank may not directly engage as principal in any activity that is not permissible for a national bank, and a subsidiary of an insured state bank may not engage as principal in any activity that is not permissible for a subsidiary of a national bank. Insured state banks that wish to obtain consent must file an application in accordance with § 362.4(c) of the proposal. Paragraph (a)(2) of § 362.4 sets out two exceptions to the general rule that the FDIC will allow a state bank to seek permission to conduct an activity as principal which is otherwise impermissible for a national bank: (1) The FDIC will not consent to an insured state bank directly engaging in any commercial venture;

and (2) an insured state bank will not be permitted to directly or indirectly through a subsidiary engage in insurance underwriting other than to the extent permitted to a national bank. The prohibition on conducting insurance underwriting is taken expressly from section 24(b)(1) of the statute. Section 362.4(b)(2)(ii) of the proposal contains an exception to the above prohibition for a bank that was engaged in the underwriting of insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation. The exception for insurance reinsured by the Federal Crop Insurance Corporation is taken verbatim from section 24(b)(2) of the FDI Act. Section 362.4(b)(2)(i) contains an exception for well-capitalized banks and their subsidiaries that were providing insurance as principal in a state on November 21, 1991 and § 362.4(b)(1) provides an exception for savings bank life insurance activities in Massachusetts, New York and Connecticut.

Paragraph (a)(2) of the proposal represents in essence the opinion of the FDIC that directly engaging in commercial ventures presents a significant risk to the deposit insurance fund and that such activities are inappropriate for federally insured depository institutions. The FDIC has the responsibility under section 24 of the FDI Act to ensure that activities conducted by insured state banks do not pose a significant risk to the deposit insurance funds. Moreover, the FDI Act also directs the FDIC to ensure that activities conducted by insured banks are consistent with the purposes of federal deposit insurance, i.e., among other things that the activities are appropriate given the extension of the federal safety net to the institution. Federal deposit insurance permits banks to fund illiquid investments (such as loans) with bank deposits (which are liquid assets), that is to say, federal deposit insurance is designed to enhance the asset transformation services of banks. Federal deposit insurance enhances those activities as it provides stability to the banking system by eliminating the motivation behind bank runs. It would be inappropriate, as well as counterproductive, for the federal safety net to in effect be extended to activities that do not compliment bank asset transformation services and which are not associated with the production and distribution of financial services. To do so may lead to greater risk taking by banks (but not bank shareholders) and may ultimately adversely affect the deposit insurance fund. What is more, it may be safely assumed that bank management is not likely to have the necessary expertise associated with conducting commercial ventures and that, if banks were to conduct commercial ventures, banks would not have any particular advantage in commercial businesses based upon economies of scale or other factors which would make those ventures profitable for banks.

Having come to the above determination, the FDIC is announcing by regulation that no insured state bank will be permitted to directly engage as principal in such activities. The bar does not extend, however, to indirect activities through a subsidiary. It is conceivable that in some specific instance the conduct of a particular enterprise may provide benefits in the way of earnings to a bank if a subsidiary of the bank were to engage in that enterprise. Furthermore, if that enterprise were not supported by federally insured deposits, the deposit insurance funds would not be at risk and market distortions that might otherwise arise would not be present. Thus, the FDIC has proposed a system whereby an insured state bank is not precluded from requesting consent to engage as principal through a subsidiary in a commercial venture that is otherwise impermissible for a subsidiary of a national bank. Whether or not the bank obtains consent will depend upon the FDIC's analysis of the risk that might be presented to the bank and the deposit insurance funds.

The FDIC is requesting comment on whether it is appropriate for the regulation to prohibit insured state banks from directly participating in commercial ventures. Comment is also specifically requested on whether the list of prohibited activities should be expanded, and if so, what activities should be included.

Exceptions to the General Requirement to Obtain FDIC's Prior Consent

Section 362.4(b) of the proposal sets out several exceptions to the general requirement that an insured state bank must obtain the FDIC's prior consent to directly or indirectly engage as principal in any activity that is not permissible for a national bank and its subsidiaries. A number of the exceptions are simply carried over from section 24 itself. Other exceptions embody the FDIC's preliminary determination that it will not present a significant risk to the deposit insurance fund for any insured state bank to engage as principal in particular activities provided that certain conditions and restrictions are observed. The FDIC has proposed three exceptions on the basis that the activities covered thereby do not present a significant risk to the deposit insurance fund. The FDIC specifically invites comment on whether the list of activities that have been found not to present a significant risk to the fund should be expanded and upon what basis that should be done if the FDIC were to do so.

Insured state banks should note that the FDIC specifically considered, but has not proposed regulatory language for, an exception that would allow a state bank to enter into a contract with a broker-dealer under which the broker-dealer would provide securities services on the bank's premises. The FDIC is aware that the OCC has by interpretive letter advised national banks that such arrangements are permissible depending upon the overall facts and just how the contract is structured. Inasmuch as it is the FDIC's posture that, generally speaking, an insured state bank is bound by the conditions and restrictions under which a national bank can enter into a contract as principal, any such contract that a state bank wanted to enter into that differed from the type of contract which is permissible for a national bank would require the FDIC's consent. In connection therewith, comment is sought on whether the FDIC should adopt an exception that would allow state banks, without the FDIC's prior consent, to enter into contracts with third parties whereby those parties would conduct on the bank's premises activities that do not fall within the definition of "as principal" activities.

If such an exception were to be adopted, should the FDIC impose any conditions or restrictions on the exception such as affirmative disclosure requirements, disclosure of the contract terms to the bank's shareholders, limitations on the manner in which the bank may be compensated, limitations on the use of shared bank employees, limitations on indemnification, etc.? Of course, even if the FDIC were to adopt an exception covering this type of contract that would obviate the need for prior consent, the terms and conditions of the contract and the manner in which the business of the third party was operated would need to comport with safe and sound banking. In short, the fact that an insured state bank may not need the FDIC's prior consent as the regulation provides for an exception does not preclude the FDIC from later finding the activity, or the manner in which it is conducted, to involve an unsafe or unsound banking practice.

The FDIC considered, but has not specifically proposed for comment, an

additional exception that would fall under the category of activities permissible for an insured state bank and/or its majority owned subsidiaries without the need for FDIC's individual case-by-case prior approval. The exception considered by the agency would have allowed an insured state bank the flexibility of holding equity securities through a bona fide, majority owned subsidiary of the bank provided that certain restrictions were met. The type of restrictions under consideration by the agency were the following: The equity securities must be listed on a national securities exchange, the subsidiary could not control any issuer of the securities, the bank must meet the minimum capital requirements, and the bank must be adequately capitalized without taking into consideration the bank's investment in the subsidiary. Consideration was also given to limiting the bank's investment in the subsidiary to a maximum of 25 percent of the bank's capital.

Consideration was given to such an exception on the grounds that equity investments can offer an additional source of earnings and opportunity for diversification. At the same time, however, such investments can pose safety and soundness concerns. Given those concerns, staff attempted to evaluate whether it would be possible to in some way allow a bank's subsidiary to in effect hold a more diversified investment portfolio and for that portfolio to not pose a significant risk to the deposit insurance fund.

Comment is invited on whether the FDIC should entertain adding an exception to the regulation that would allow an insured state bank to hold equity securities at the subsidiary level and if so, under what circumstances it would be appropriate or, is it entirely inappropriate for an insured state bank to indirectly hold equity securities? Are there circumstances other than having a subsidiary which would hold all or a portion of the bank's equity security investment portfolio which the FDIC should take into consideration when evaluating this issue? For example, the FDIC is interested in receiving comment on the impact of section 24 of the FDI Act on the investment portfolios of subsidiaries of insured state banks whose insurance underwriting activities are excepted by part 362 and section 24 of the FDI Act from the general prohibition on insurance underwriting activities. To the best of the FDIC's knowledge, it is not uncommon for insurance companies to make equity investments of a type that are not permissible for national banks.

Other than exceptions which simply reiterate what is provided for by the statute, all of the exceptions proposed for comment require that the bank meet, and continue to meet, the applicable minimum capital standards as prescribed by the bank's appropriate federal banking agency. Some of the exceptions require that a bank be adequately capitalized after deducting the bank's investment in a subsidiary that conducts certain activities. The purpose of requiring such a capital deduction is discussed at length elsewhere. Comment is invited on whether it is appropriate to require a bank to meet the applicable minimum capital standards if the regulation also requires that a bank be adequately capitalized after deducting its investment in a department or a subsidiary that engages as principal in impermissible activities. Should the regulation simply require that a bank meet the minimum capital requirements after the deduction rather than meet the adequately capitalized definition? Are there any circumstances in which the bank should be required to be well-capitalized after deducting its investment in a subsidiary or department that engages in impermissible activities? Commentors are asked to keep in mind when responding to this request that section 24 of the FDI Act requires as a prerequisite to consent that the bank meet and continue to meet the applicable capital standards prescribed by the appropriate agency. The FDIC must, therefore, take capital into consideration. Lastly, comment is requested on whether the FDIC should define the phrase "minimum capital standards" if it is retained in the regulation?

As indicated above, the exceptions generally require that the bank meet the minimum capital standards. It is not the FDIC's intention to require any bank whose capital falls below those minimum standards to immediately cease an activity in which the bank had been engaged pursuant to an exception. The FDIC will deal with such eventuality on a case-by-case basis through the examination process. In short, the FDIC intends to utilize the supervisory and regulatory tools available to it in dealing with the bank's loss of capital. The issue of the bank's ongoing activities will be dealt with in the context of that effort. In the case of a state member bank, the FDIC will communicate its concerns regarding the continued conduct of an activity to the bank's appropriate federal banking agency. It is that agency which will formulate a response to the bank's drop in capital. The FDIC is of the opinion that the case-by-case approach to whether a bank will be permitted to continue an activity is preferable to forcing a bank to, in all instances, immediately cease the activity in question. Such an inflexible approach could exacerbate an already poor situation and the FDIC has opted to reject that approach. Comment is sought on whether Section 24 allows the FDIC this flexibility. This lack of flexibility is also the reason why the standard conditions provision of the proposal does not contain the requirement that the bank continue to meet the applicable capital standards. (See discussion below under the heading "Standard Conditions".)

A more detailed discussion of the exceptions follows. In addition to comment on the specific exceptions, comment is sought on whether any additional exceptions to the application requirements should be contained in the regulation.

1. Savings Bank Life Insurance

Section 362.4(b)(1) of the proposal provides that any insured state bank that is located in Massachusetts, New York or Connecticut is not prohibited from engaging in the underwriting of savings bank life insurance provided that three conditions are met: (1) The FDIC has not found that such activities pose a significant risk to the fund; (2) the bank conducts the savings bank life insurance activities through a division of the bank that meets the definition of a "department" found in § 362.2(j) of the proposal; and (3) the bank makes certain customer disclosures. This exception is based upon section 24(e) of the FDI Act which creates a savings bank life insurance exception, requires that consumer disclosures be made, and directs the FDIC to make a finding whether savings bank life insurance activities under the exception in section 24(e) will pose a significant risk to the fund. The FDIC is instructed by the statute to make that finding by December 19, 1992. The substance, timing, and placement of disclosure are the same as are required under § 362.3(b)(3) of the regulation which sets out a parallel exception for the ownership of the equity of a savings bank life insurance company. Disclosure must be prominent, must be made prior to the time of purchase of the insurance policy, other insurance product, or annuity, and must be in a separate document clearly labeled consumer disclosure if the disclosure does not appear on the face of the policy, other insurance product, or annuity. If state

law or regulation provides for substantially similar disclosure, a bank may simply comply with state law. The disclosure itself must contain the following or a similar statement: "This [insurance policy, other insurance product, annuity] is not a federally insured deposit and only the assets of the bank's insurance department may legally be used to satisfy any obligation of that department."

The FDIC does not anticipate that the above restrictions, including the requirement for savings bank life insurance activities to take place in a department of the bank, will disrupt any ongoing savings bank life insurance operations to any significant degree. Comment is specifically sought on whether the FDIC's assumption in this matter is correct. If not, what changes should be made to the proposal, and why?

2. Insurance Underwriting

Section 24(d)(2)(A) of the FDI Act provides that no subsidiary of an insured state bank may engage in insurance underwriting except to the extent such activities are permissible for national banks. Notwithstanding the general prohibition under section 24(d)(2)(A), section 24(d)(2)(B) provides that a well-capitalized insured state bank that was lawfully providing insurance principal on November 21, 1991 may continue to provide insurance as principal in the state or states in which the bank did so on November 21, 1991 so long as the insurance that is provided is of the same type which the bank provided as of November 21, 1991 and the insurance is only offered to residents of that state, individuals employed in that state, and any other person to whom the bank provided insurance as principal without interruption since such person resided in or was employed in that state. In the case of resident companies or partnerships, the bank's principal activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state. Section 362.4(b)(2)(i) of the proposed regulation recites the exception for insurance underwriting found in section 24(d)(2)(B).

Section 362.4(b)(2)(ii) of the proposal provides that, notwithstanding the overall prohibition on an insured state bank underwriting insurance which a national bank could not underwrite, an insured state bank that was engaged in the underwriting of insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to do so. This exception tracks the language of section 24(b)(2) of the FDI Act.

3. Activities Found Not To Present a Significant Risk to the Deposit Insurance Fund

Section 24(d)(1) of the FDI Act provides that after December 19, 1992, a subsidiary of an insured state bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless the FDIC has determined that the activity poses no significant risk to the appropriate deposit insurance fund and the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate federal banking agency. The FDIC has preliminarily determined that certain activities do not represent a significant risk to the deposit insurance funds and therefore may be engaged in as principal without first obtaining the prior consent of the FDIC. Section 362.4(b)(3) lists those activities.

(a) Guarantee Activities

Section 362.4(b)(3)(i)(A) of the proposed rule provides that an insured state bank which meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency may directly guarantee the obligations of others as provided for in § 347.3(c)(1) of the FDIC's regulations. Section 347.3(c)(1) provides that foreign branches may guarantee customer's debts or otherwise agree for their benefit to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies the branch's maximum monetary liability thereunder. The guarantee or agreement shall be combined with all standby letters of credit and loans for purposes of applying any legal limitation on loans of the bank. If the guarantee or agreement is subject to separate limitation under state or federal law, the separate limitation shall apply in lieu of the loan limitation.

Section 362.4(b)(3)(i)(B) of the proposed regulation provides that an insured state bank that meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency, may directly offer customer-sponsored credit card programs, and similar arrangements, in which the insured state bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers, provided that the bank must establish the creditworthiness of the individual before undertaking to guarantee his/her obligations.

Both of these exceptions are carried over from part 332 of the FDIC's regulations, "Powers Inconsistent with the Purposes of Federal Deposit Insurance Law". That regulation, which the FDIC proposes to remove (see notice published elsewhere in today's Federal Register), prohibits insured state nonmember banks (except a District bank) from, among other things, acting as surety or guaranteeing the obligations of others subject to certain listed exceptions. The FDIC has also recognized a number of additional exceptions over the years on an interpretive basis. Those interpretive exceptions are the same ones that the OCC has recognized by regulation for national banks. National banks have been found by the courts to lack the authority to act as surety or guarantee the obligations of others except in certain instances. The two exceptions set out in § 362.4(b)(3)(i) of the proposal which are carried over from part 332 are not found in OCC's regulations. Insured state banks should note that any guarantee that would be permissible for a national bank may be entered into by a state bank, assuming that state law authorizes the bank to do so, without the bank first obtaining the FDIC's consent under part 362.

(b) Activities That Are Closely Related to Banking

Under § 362.4(b)(3)(ii) of the proposal, an insured state bank that meets, and continues to meet, the applicable minimum capital standards as prescribed by its appropriate federal banking agency may, without first obtaining the FDIC's prior consent, engage as principal through a subsidiary in any activity that is otherwise impermissible for a subsidiary of a national bank if that activity has been found by the Board of Governors of the Federal Reserve System (FRB) to be closely related to banking for the purposes of Section 4 of the Bank Holding Company Act (12 U.S.C. 1843). Thus, any as principal activity that is on the FRB's section 4(c)(8) list (see 12 CFR 225.25), or has been found by the FRB by order to be closely related to banking, does not require the FDIC's prior consent if it is to be conducted through a subsidiary.

Comment is requested on whether the regulation should contain this exception. If so, should the regulation extend the same treatment to the direct conduct of such activities. Should the regulation require that the subsidiary be

a bona fide subsidiary in order for the exception to apply?

(c) Securities Activities Conducted Through a Subsidiary of an Insured Nonmember Bank

Section 362.4(b)(iii) of the proposal sets out an exception for securities activities conducted by an insured nonmember bank through a subsidiary of the bank provided that: (1) Those activities are conducted in compliance with § 337.4 of the FDIC's regulations, (2) the bank meets, and continues to meet, the applicable minimum capital standards of part 325 of this chapter, and (3) the bank is adequately capitalized exclusive of any investment in the subsidiary that is required by § 337.4 to be deducted from the bank's capital. If § 337.4 is followed, the provisions contained therein apply in lieu of any portion of part 362.

Section 337.4 of the FDIC's regulations governs the securities activities of subsidiaries of insured nonmember banks. In brief, that regulation (1) Requires that any subsidiary which engages in securities activities that are not permissible for the parent bank under Section 16 of the Glass-Steagall Act (12 U.S.C. 24 (Seventh)) must be a bona fide subsidiary; (2) requires the bank's investment in such a subsidiary be deducted from the bank's capital; (3) requires that the FDIC be given prior notice before an insured nonmember bank acquires or establishes a subsidiary that engages in any securities activity; (4) places certain restrictions on transactions between a bank and its securities subsidiary; and (5) requires that customer disclosures be given under certain circumstances.

Section 337.4 of the FDIC's regulations was adopted in 1984 in order to address the safety and soundness and conflicts of interest concerns that can arise if an insured nonmember bank has a subsidiary which engages in securities activities of the sort that would not be permissible under the Glass-Steagall Act for the parent bank. The FDIC is satisfied that the restrictions contained in § 337.4 adequately address those concerns. The Board of Directors has therefore concluded that for a state nonmember bank to conduct securities activities through a subsidiary of the bank in accordance with § 337.4 will not pose a significant risk to the deposit insurance fund.

Comment is specifically requested on whether it is appropriate for the regulation to contain the above described exception.

Application Requirements

Generally

Under § 362.4(c)(1) of the proposal, after December 19, 1992, (unless otherwise provided for by part 362) no insured state bank may directly engage as principal in any activity that is not permissible for a national bank, and no subsidiary of an insured state bank may engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the bank meets and continues to meet the applicable minimum capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the conduct of the activity by the bank and/or its subsidiary will not pose a significant risk to the affected deposit insurance fund. An insured state bank must obtain the FDIC's prior consent for each subsidiary that engages as principal, or will engage as principal, in any activity that is not otherwise excepted and which is not permissible for a subsidiary of a national bank. If the bank has a subsidiary that is engaging in an activity for which proper notice or application has been made, notice or application will need to be made prior to the bank acquiring or forming any other subsidiary even if that subsidiary is engaging in the same type of activity. (See § 362.4(c)(1)(ii)). The application for subsequent subsidiaries doe not need to contain the same amount of information however.

Under the proposal, a bank that does not meet the minimum capital requirements set by its appropriate federal banking agency that as of December 19, 1992 engaged as principal in an otherwise impermissible activity must cease that activity as soon as practicable but in no event later than six months after the effective date of this section. This provision allows banks that do not meet the minimum capital requirements a period of time in which to terminate an impermissible activity. It is the opinion of the FDIC that to do otherwise may prove more harmful to the affected banks. If the bank attains the minimum prescribed capital level within the six month period, the bank may apply for consent to continue the activity.

If an insured state bank had obtained the FDIC's consent under section 333.3 of the FDIC's regulations to engage in an activity that is not permissible for a federal savings association and which is not permissible under this part without the FDIC's consent, the insured state bank does not need to obtain FDIC consent under this part in order to continue the activity. (See § 362.4(c)(1)(iv) of the proposal).

The effective date of the restrictions on activities of insured state banks and their majority-owned subsidiaries is December 19, 1992. Section 362.4(c)(1)(v) of the proposal provides that any insured state bank which has filed an application requesting consent to directly, or indirectly, continue any activity that is not permissible for a national bank or its subsidiary may continue to engage in the ongoing activity while the bank's application is pending, however, in no case may the activity continue for more than six months after the effective date of the regulation unless the FDIC grants an extension of time or the bank's application is granted. The language of this paragraph thus grants banks authority to continue their otherwise impermissible activities beyond December 19, 1992. Without this provision, a bank would be required to cease an otherwise impermissible activity even though the FDIC may ultimately approve of the activity. As such disruption of business would serve no purpose, the proposal creates, in effect, up to a six months safe harbor period. Comment is requested on the need for this provision.

Application for Consent to Directly or Indirectly Engage in Impermissible Activities

Applications under § 362.4(c) of the proposal for consent to directly engage in an otherwise impermissible activity are to be filed with the FDIC regional director (supervision) for the FDIC region in which the insured state bank's principal office is located. The applications should: (1) Briefly describe the activity and the manner in which it will be conducted; (2) contain a copy, if any, of the bank's feasibility study, financial projections and/or proposed business plan regarding how the activity is to be conducted; (3) provide a citation of the statutory or regulatory authority to conduct the activity from which the bank derives its authority to conduct the activity in question; (4) contain a copy of the written approval the bank received when it requested consent to conduct the activity from the appropriate regulatory authority if such approval was necessary; (5) provide an indication of the expected volume or level of the activity; (6) contain a copy of the resolution by the bank's board of directors or trustees authorizing the conduct of the activity and the filing of the application; (7) contain a brief description of the bank's policies with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the bank (including related interests of such

persons); (8) provide a calculation of the bank's applicable capital ratios as of the date of the filing of the application; and (9) describe the bank's expertise in the activity to be undertaken. The information requested may be satisfied by submitting a copy of a pending request as filed with another regulatory authority if that request substantially meets the information requirements detailed above. The terms "director", "executive officer", "principal shareholder", and "related interest" shall have the same meaning as is relevant for purposes of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) and § 337.3 of the FDIC's regulations (12 CFR 337.3) which concern extensions of credit to bank insiders.

Applications for consent to conduct otherwise impermissible activities through a subsidiary should contain the above information plus the following: (1) The amount of the bank's proposed investment in, and expected extensions of credit to, the subsidiary; (2) the bank's investment in, and extensions of credit to, other subsidiaries conducting the same type of activity; and (3) the bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary.

If an insured state bank has previously obtained the FDIC's consent for a subsidiary to engage as principal in a particular activity, subsequent requests for consent for another subsidiary of the bank to engage as principal in the same activity need not contain as much information as the first such request. The following information is required to be filed in the subsequent requests: (1) A brief description of the proposed activity; (2) an indication of the expected volume or level of the activity; (3) the bank's applicable capital ratios as of the date of the filing of the application; (4) the amount of the bank's proposed investment in, and expected extensions of credit to, the subsidiary; (5) the bank's investment in, and extensions of credit to, other subsidiaries conducting the same type of activity; and (6) the bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary. (See § 362.4(c)(2)(iii)).

For the purposes of this section, the term "same activity" shall be understood to refer to business lines that are generally similar, require the same expertise, and entail the same amount or character of risk. For instance, a subsidiary that has received previous consent to invest in a specific multi-family residential unit is conducting the same activity as a related subsidiary that is investing in a multi-family residential unit in a different part of town. However, the subsidiary would not be engaging in the same activity as a related subsidiary that is investing in commercial office space.

Application for Consent To Continue an Ongoing Activity

Insured state banks that wish to continue to directly engage in an ongoing activity that is otherwise impermissible must file an application with the FDIC which contains the following information: (1) A brief description of the activity and the manner in which it is presently being conducted; (2) a copy of the bank's management or business plan, if any, concerning the conduct of the activity; (3) an indication of the present and expected volume or level of the activity; (4) a brief description of the bank's policy and practice regarding the involvement in the activity by directors, executive officers or principal shareholders, or any related interest of such person; (5) a summary of management's expertise to conduct the activity; (6) a citation of the statutory or regulatory authority upon which the bank is relying in conducting the activity; (7) a brief description of how, if at all, the current conduct of the activity differs from standard conditions set out in this proposal (is the subsidiary "bona fide", is the bank adequately capitalized, is the department separated from other operations of the bank, etc.); and (8) the bank's applicable capital ratios as of the filing of the application.

In addition to the information discussed above, applications for consent to continue to engage as principal through a subsidiary in an ongoing activity that is not permissible for a subsidiary of a national bank shall contain: (1) A statement of the amount of the bank's investment in, and extensions of credit to, the subsidiary; (2) the aggregate amount of the bank's investment in, and extensions of credit to, all such subsidiaries; and (3) the bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary.

Phase-out of Activities for Which Consent To Continue Has Been Denied

Under § 362.4(c)(4)(i) of the proposal, insured state banks that have been denied consent to continue an ongoing activity must stop the activity as soon as practical but in no event later than one year from the denial unless the FDIC has set a different time period. Since the primary reason for any denial would be a finding that the activity presents a significant risk to the fund, the FDIC may condition or restrict the conduct of the activity until such time as the activity is terminated.

Under § 362.4(c)(4)(ii), if the insured state bank has been denied consent to continue to conduct an ongoing activity through a subsidiary, the bank must divest its equity interest in the subsidiary as quickly as prudently possible but in no event later than December 19, 1996. In such event, the bank is directed to file a divestiture plan in accordance with the provisions of this part. Section 362.4(c)(4)(ii) is consistent with the statutory provisions contained in section 24(c) of the FDI Act which allow a five-year divestiture period for impermissible equity investments. The continued conduct of the activity during the divestiture period may be conditioned or restricted by the FDIC.

An insured state bank need not divest the subsidiary if the bank chooses to discontinue the impermissible activity rather than to divest the subsidiary. If the bank so chooses, the activity must be discontinued as soon as practical but in no event later than one year from the date of the denial. If the bank elects to discontinue the impermissible activity, it must file a notice with the appropriate regional office no later than 60 days after the bank receives notice that consent to continue the activity was denied.

The FDIC is interested in receiving comment on the particular problems and concerns the timing of divestiture presents for banks that own subsidiaries which invest in real estate if a bank's application to continue the activities of that subsidiary is denied.

Standard Conditions

Any approval of a request for consent to conduct an otherwise prohibited activity shall be subject to standard conditions unless specifically waived by the approving official. If the approval involves conduct of an activity in a subsidiary of an insured state bank, approval shall be conditioned upon: (1) The subsidiary meeting all of the criteria necessary for a bona fide subsidiary, and (2) the insured state bank being adequately capitalized exclusive of the bank's investment in the subsidiary.

If an insured state bank would not be adequately capitalized exclusive of the bank's investment in its subsidiary, the FDIC may nonetheless, in its discretion, approve an application for a subsidiary to continue an ongoing activity that is otherwise impermissible provided that the bank is expected to be adequately capitalized, taking into account the deduction of the bank's investment in the subsidiary from the bank's capital.

no later than three years from the approval of the application. The three year period set out in the proposal is not automatic and it is left to the sole discretion of the FDIC to determine a workable period of time (up to three years) for an insured state bank to raise its capital levels to an appropriate level. Additionally, under the proposal the FDIC may, in its discretion, approve an application for a subsidiary that does not meet the definition of a bona fide subsidiary to continue to engage in an otherwise impermissible activity provided that subsidiary is expected to meet the requirements of a bona fide subsidiary no later than six months from the approval of the application. Both of these provisions build some flexibility into the regulation to accommodate ongoing operations.

Under the proposed regulation approval of an application by an insured state bank to directly conduct an otherwise impermissible activity shall be conditioned upon (1) the activity being conducted in a division which meets all of the criteria of a department as that term has been defined earlier in this part, and (2) the bank being adequately capitalized exclusive of the bank's investment in such division. The bank, in the FDIC's discretion, may be allowed to continue the direct conduct of an ongoing activity even though the bank would not be adequately capitalized exclusive of its investment in the department provided that the bank is expected to be adequately capitalized no later than three years from the approval of the application taking into account the deduction of the investment. Similarly, the FDIC may, in its discretion, allow a bank to continue an ongoing activity conducted in a department that does not meet the definition of "department" if the necessary adjustments are made to the operations of the department so that it meets the definition of department no later than six months after the approval of the application.

The conditions described above are to be considered standard and exceptions will only be granted if the applicant can demonstrate that other features of the bank's proposal will provide a similar degree of protection for the insured bank. Other relevant conditions may be imposed by the approving official when considered appropriate including limits on the volume of the activity and additional capital requirements to support the level of activity anticipated. Nothing in this proposal is intended to limit the types of conditions which may be imposed on an applicant by the granting official or the conditions or restrictions that may be imposed as a result of any ongoing supervision of the bank.

Comment is requested on the appropriateness of the standard conditions as proposed. Should the FDIC consider any conditions in addition to or in lieu of the proposed conditions? Should the conditions that have been proposed be modified in any way? For example, is six months sufficient time to bring an existing division into compliance with the definition of department? Are there activities, such as real estate investment activities, for example, which if conducted by a subsidiary warrant requiring that the parent bank be well-capitalized after the capital deduction is taken?

Transaction Restrictions

Section 362.4(e) of the proposal sets out five restrictions which apply in the case of any subsidiary of an insured state bank that is required by Part 362 to be a bona fide subsidiary as that term is defined in § 362.2(e). The restrictions do not apply to any subsidiary that is not required by the proposal to be a bona fide subsidiary. Comment is specifically requested on the need for the proposed restrictions; what problems, if any, would be posed by the adoption of the proposed restrictions as worded; and whether any additional restrictions should be adopted. For example, should the proposed regulation contain any anti-tying restrictions?

The first restriction, found in § 362.4(e)(i), provides that no insured state bank may engage in any transaction with its bona fide subsidiary on terms or under circumstances that are less favorable than those prevailing at the time of the transaction for comparable transactions involving companies that are not subsidiaries of the bank nor are affiliated with the bank. In addition to other types of transactions, this restriction covers extensions of credit from the bank to its subsidiary. This restriction parallels the restrictions found in Section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) which places restrictions on a bank's transactions with its affiliates. As the term "affiliate" as used in section 23B of the Federal Reserve Act does not generally extend to a subsidiary of a bank, the protections afforded by that law do not apply as between a bank and its subsidiaries. Section 362.4(e)(i) of the proposal fills that gap.

Section 362.4(e)(ii) of the proposal places restrictions on purchases of any asset or product by an insured state bank acting as fiduciary when those assets or products are purchased from any of the bank's bona fide subsidiaries. Under the proposal, such purchases cannot be made unless: (1) The purchase is expressly authorized by the trust instrument, court order or local law or specific authority for the purchase is obtained from all interested parties after full disclosure (§ 362.4(e)(ii)(A)); (2) the purchase is permissible under applicable federal and/or state statute or regulation (§ 362.4(e)(ii)(C); or (3) the purchase is otherwise consistent with the bank's fiduciary obligation (§ 362.4(e)(ii)(B)). These restrictions are identical to restrictions found in § 337.4(e)(1) of this chapter which governs purchases of securities by an insured nonmember bank as fiduciary or managing agent where the securities are currently distributed, currently underwritten, or issued by a subsidiary or affiliate of the bank that engages in the sale, distribution, or underwriting of securities, or the securities are issued by an investment company advised by a subsidiary or affiliate of the bank. (For a discussion of the language as adopted in connection with § 337.4(e)(1) see 49 FR 46709, 46717, November 28, 1984.)

It is not FDIC's intent in proposing this language to change the common law of fiduciary obligation. The FDIC's intent rather is to merely restate the common law obligation of a fiduciary to refrain from self dealing. The language which references applicable federal and/or state law is designed to take into account, for example, federal law governing employee benefit and pension plans which would permit, in certain instances, transactions involving such funds and affiliates of the funds' trustees. The language allowing for purchases if they "are otherwise consistent with the bank's fiduciary obligation" is proposed in recognition that a trustee may not always be required under the common law to meet the conditions of § 362.4(e)(ii)(A) in order to make purchases from a subsidiary of the bank.

Section 362.4(e)(iii) of the proposal provides that no insured state bank may enter into a contract with any of its subsidiaries if the contract violates any law or regulation, will result in a breach of a fiduciary duty, will adversely affect or misrepresent the bank's safety or soundness, or is likely to have any such result. This language is consistent with section 30 of the FDI Act (12 U.S.C. 1831g) which prohibits any insured depository institution from entering into a contract with any person to provide goods, products, or services to or for the benefit of the depository institution if the performance of the contract would adversely affect the safety or soundness

of the institution. Comment is requested on whether this provision should be adopted or not. Is the provision unnecessary in view of Section 30 of the FDI Act?

Sections 362.4(e)(4) and 362.4(e)(5) of the proposal restrict extensions of credit that an insured state bank may make to its subsidiaries. Extensions of credit to any one bona fide subsidiary cannot exceed 10 percent of the bank's tier one capital and the bank's aggregate extensions of credit to all of its bona fide subsidiaries cannot exceed 20 percent of the bank's tier one capital. These limits parallel the limits on loans by insured state banks to their affiliates under section 23A of the Federal Reserve Act (12 U.S.C. 371c). "Affiliate" as that term is defined for the purposes of section 23A of the Federal Reserve Act does not generally encompass a subsidiary of a bank. The purpose of this portion of the proposal is to fill that regulatory gap by placing limits on the amount of loans that a bank may make to its subsidiaries. In addition to covering direct loans, any loan by a bank affiliate of an insured state bank to the bank's subsidiary will count toward the insured state bank's lending limit under the proposal. This provision has been included in order that a bank cannot exceed the loan limits simply by channeling funds to its subsidiary through a sister bank. It will also protect the affiliated bank from pressures it might otherwise experience to fund the activities of its affiliated bank's subsidiaries. Finally, the proposed individual and aggregate loan limit both include any extensions of credit made by the bank, or any of its affiliated banks, that are secured by the debt of, or equity securities issued by, the bank's bona fide subsidiaries. Thus, if the bank finances the purchase by a borrower of debt issued by the bank's subsidiary and the extension of credit is secured by the subsidiary's debt, the extension of credit will count toward the bank's ten percent lending limit.

Disclosure Requirements

The FDIC is proposing that no insured state bank may have a subsidiary or a department that engages as principal in any activity that is not permissible for a national bank unless the subsidiary or department provides any persons doing or about to do business with that subsidiary or department written disclosure that the products, goods or services offered by the subsidiary or department are not insured by the FDIC, are not guaranteed by the bank, and that only the assets of the department or subsidiary (as the case may be) are available to satisfy the obligations of, or any contractual claims arising in connection with, the operation of the subsidiary or department. Under the proposal, an insured state must obtain the signature of any person to whom disclosure is made acknowledging that such person has read the disclosure. Disclosure must be made prior to the time a contractual obligation to purchase any product, good or service arises. The following or a similar statement will satisfy the disclosure requirement in the case of a subsidiary: "_____ is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank. The assets of [insert name of bank and relationship of bank to subsidiary] are not available to satisfy any obligation or liability of [insert name of subsidiary]". The following or a similar statement will satisfy the disclosure requirement in the case of a department: "_____ is not a federally insured deposit. Only the assets of _____ department of the bank are available to satisfy the obligations of, or any contractual claims arising in connection with the operation of, _____ department".

Comment is requested on the need for the disclosures described above. If the FDIC requires that disclosure be made, should the disclosure requirement be more tailored to the particular type of product or service? Should disclosure be required only in instances in which the department or subsidiary are offering in some manner to the public a product or service that can be described as a financial product which might be more readily confused with an insured deposit? If the product or service that is being offered is unlikely to be confused with an insured deposit, should the disclosure be confined to describing the extent to which the bank's assets may be used to satisfy the obligations of the department or subsidiary?

Insured state banks are also asked to note that the section as proposed would require disclosure in the case of any subsidiary that engages as principal in an otherwise impermissible activity. The disclosure obligation therefore attaches under the proposal whether or not the subsidiary is required to be a bona fide subsidiary. If, however, another provision of part 362 sets out disclosure requirements, such as in the case of savings bank life insurance activities, those disclosure requirements are to be followed rather than § 362.4(f). Additionally, it should be noted that the disclosure requirements attach whether or not the bank is required to obtain the FDIC's prior consent to engaging directly or indirectly in the activity in question.

The FDIC specifically considered, but has not actually proposed for comment, a requirement that any advertisements, promotions or solicitations entered into jointly by insured state banks and any subsidiary or department of the bank that engages in any activity that is not permissable for a national bank must include the disclosure set forth in proposed § 362.4(f). If such a requirement were to be adopted, it is contemplated that the disclosure could be in any form and manner consistent with the advertising or other media utilized. The FDIC also considered proposing that advertisements, promotions or other solicitations placed in account statements, or other communications from the bank to its customers which pertain to the activities of a subsidiary or a department of the bank that engages in activities that are not permissible for a national bank must contain the disclosure set forth in proposed § 362.4(f). Such a provision would basically be designed to cover statement stuffers.

Comment is sought on whether the final regulation should contain any provision dealing with joint advertisements and statement stuffers. What problems and/or burdens would be posed by such a requirement?

Conditions and Restrictions Applicable to Banks and Their Subsidiaries That Engage in Excepted Insurance Underwriting Activities

Part 362 contains several exceptions to the general prohibition on an insured state bank or its subsidiaries engaging in insurance underwriting. These exceptions pertain to title insurance, crop insurance, and insurance underwriting (in general) under particular circumstances. (See § 362.3(b)(7) and § 362.4(b)(2).) A bank must be well-capitalized in order for a bank to take advantage of the exception found in § 362.3(b)(7)(ii) and 362.4(b)(2)(i)). That requirement is taken directly from Section 24 of the FDI Act. Other than for that requirement, Section 24 does not expressly impose any other conditions or restrictions on the exercise of the excepted insurance underwriting authority by an insured state bank or its subsidiaries. The FDIC is not precluded from imposing such restrictions itself, however, as section 24(i) clearly indicates. It is the FDIC's opinion that it is appropriate for the regulation to impose restrictions on the use of the excepted insurance underwriting authority in order to protect bank safety and soundness and to protect the deposit insurance fund. The FDIC therefore, in § 362.4(g) of the

proposed regulation, is proposing to prohibit any insured state bank from directly, or indirectly through a subsidiary, underwriting insurance pursuant to the exceptions contained in § 362.3(b)(7) or § 362.4(b)(2) unless the following conditions are met: (1) If the insurance underwriting is done directly by the bank, the underwriting must be done through a division of the bank that meets the definition of "department" contained in § 362.2(j) of the proposal; (2) if the insurance underwriting is done through a subsidiary of the bank, the subsidiary must meet the definition of a "bona fide subsidiary" contained in § 362.2(e) of the proposal; and (3) the disclosure requirements contained in § 362.4 of the proposal must be met.

Any bank or subsidiary of a bank that is presently underwriting insurance which is otherwise eligible for one of the exceptions contained in § 362.3(b)(7) or § 362.4(b)(2) is given up to one year to comply with the requirements set out above with the exception of the requirement to make disclosure. The obligation to make the disclosures as set out in § 362.4(f) will operate immediately upon the effectiveness of the regulation.

Comment is requested on the propriety of imposing the above described restrictions; what burden if any will be imposed by the restrictions if adopted; what restrictions, if any, in addition to or in lieu of the above should be imposed; and whether it is appropriate to impose these conditions on all three categories of excepted insurance underwriting as opposed to only some of the categories.

Regulatory Flexibility Analysis

The Board of Directors has concluded after reviewing the proposed amendments, that the amendments, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments.

In consideration of the foregoing, the FDIC hereby proposes to amend chapter III of title 12 of the Code of Federal Regulations by amending part 362 as follows:

PART 362—ACTIVITIES AND INVESTMENTS OF INSURED STATE BANKS

1. The authority citation for part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 [Tenth], 1831a.

§ 362.1 [Amended]

2. Section 362.1 is amended by adding "and their subsidiaries" at the end of the first sentence and by adding "or their subsidiaries" after the words "undertaken by insured state banks" in the second sentence.

3. Section 362.2 is amended by revising the introductory text; redesignating paragraphs (a) through (c), (d) through (h), (i), and (j) through (p) as paragraphs (g) through (i), (k) through (o), (q), and (t) through (z), respectively; amending newly designated paragraph (z) by removing the final two sentences and adding "and § 362.4(b)(2)" after "§ 362.3(b)(7)" where it appears in the second sentence; and adding new paragraphs (a) through (f), (j), (p), (r), and (s) to read as follows:

§ 362.2 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Activity* refers to the authorized conduct of business by an insured state bank. *Activity* as used in connection with the direct conduct of business by an insured state bank includes acquiring or retaining any investment other than an equity investment. *Activity* as used in connection with the conduct of business by a subsidiary of an insured state bank includes acquiring or retaining any investment.

(b) The phrase *activity permissible for a national bank* shall be understood to refer to any activity authorized for national banks under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute. Activities expressly authorized by statute or recognized as permissible in regulations issued by the Office of the Comptroller of the Currency; official circulars or bulletins issued by the Office of the Comptroller of the Currency or in any order or written interpretation issued by the Office of the Comptroller of the Currency will be accepted as permissible for state banks.

(c) *Affiliate* shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state bank.

(d) An activity is considered to be conducted *as principal* if it is conducted other than as agent for a customer, is conducted other than in a brokerage, custodial or advisory capacity, or is conducted other than as trustee.

(e) *Bona fide subsidiary* means a subsidiary of an insured state bank that at a minimum:

(1) Is adequately capitalized;

(2) Is physically separate and distinct in its operations from the operations of the bank;

(3) Maintains separate accounting and other corporate records;

(4) Observes separate formalities such as separate board of directors' meetings;

(5) Maintains separate employees who are compensated by the subsidiary, however, this requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and record keeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to those agreed to by independent entities;

(6) Shares no common officers with the bank;

(7) A majority of its board of directors is composed of persons who are neither directors nor officers of the bank; and

(8) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank.

(f) An insured state bank is considered to be engaged in a *commercial venture* if the bank is engaged in the conduct of any activity other than the providing of financial services. A *financial service* shall be understood for the purposes of this part to mean the supplying of funds or capital; the granting of credit; the management of funds or the making of investments for or on behalf of businesses, groups or individuals; transaction services which involve facilitating payments and transfers of funds such as processing payments, clearing payments, and currency exchange; the production or distribution of financial instruments including the underwriting and sales of debt and equity securities and derivative financial instruments as well as options that represent future claims against financial instruments; the production or distribution of information pertaining to the credit markets; insuring against risk of loss; and any other service that is

determined by the FDIC to qualify as a financial service.

* * * * *

(j) *Department* means a division of an insured state bank; (1) That is physically distinct from the remainder of the bank;

(2) That maintains separate accounting and other records;

(3) The assets, liabilities, obligations and expenses of which are by statute separate and distinct from those of the remainder of the bank;

(4) The obligations, liabilities, and expenses of which can only be satisfied with the assets of the division; and

(5) That is liquidated under applicable law separately from the other divisions of the bank.

* * * * *

(p) *Extension of credit* shall have the same meaning as used for the purposes of § 337.3 of this chapter.

* * * * *

(r) *Investment in a department* by an insured state bank means any transfer of funds by an insured state bank to one of its departments which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by that department shall not be considered an investment in the department.

(s) *Investment in a subsidiary* by an insured state bank shall mean the total of any equity investment in a subsidiary by a bank plus any debt issued by the subsidiary that is held by the insured state bank.

* * * * *

§§ 362.4 and 362.5 [Redesignated as 362.5 and 362.6 respectively and amended]

4. It is proposed that part 362 be amended by redesignating §§ 362.4 and 362.5 as §§ 362.5 and 362.6, respectively and that newly designated § 362.6 be amended by removing the comma after "§ 362.3(c)(2)" and adding in lieu thereof a semicolon; removing ", and" where is appears after "§ 362.3(d)" and adding a semicolon; and adding after "§ 362.3(b)(7)(ii)" the words "; and the authority to approve or deny requests for consent pursuant to § 362.4(c)".

5. It is proposed that part 362 be amended by adding a new § 362.4 to read as follows:

§ 362.4 Activities of insured state banks and their subsidiaries.

(a) *General prohibitions.* (1) Except as otherwise provided in this part, after December 19, 1992, an insured state bank may not directly engage as principal in any activity that is not permissible for a national bank, and a subsidiary of an insured state bank may not engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the FDIC gives its consent. Applications for consent to directly, or indirectly through a subsidiary, engage in activities that are not permissible for a national bank or a subsidiary of a national bank, should be filed in accordance with § 362.4(c).

(2) Except as otherwise provided in this part, and § 362.4(a)(1) notwithstanding, no insured state bank may:

(i) Directly engage in commercial ventures; or

(ii) Directly or indirectly through a subsidiary engage in any insurance underwriting activity other than to the extent such activities are permissible for a national bank or a subsidiary of a national bank.

(b) *Exceptions.*—(1) *Savings bank life insurance.* Any insured state bank that is located in Massachusetts, New York or Connecticut that is otherwise authorized to do so is not prohibited from engaging in the underwriting of savings bank life insurance *provided that:*

(i) The FDIC has not found that such activities pose a significant risk to the insurance fund of which the bank is a member;

(ii) The insurance underwriting is conducted through a division of the bank that meets the definition of "department" contained in § 362.2(j); and

(iii) The bank discloses to purchasers of life insurance policies, other insurance products and annuities which are offered to the public that the policies, other insurance products and annuities are not insured by the FDIC and that only the assets of the insurance department may be used to satisfy the obligations of the insurance department. The disclosure must be made prior to the time of purchase of the insurance policy, other insurance product, or annuity; must be prominent; and must be in a separate document clearly labeled "consumer disclosure" if the disclosure does not appear on the face of the policy, other insurance product, or annuity. The following or a similar statement will satisfy the disclosure obligation: "This [insurance policy, other insurance product, annuity] is not a federally insured deposit and only the assets of the bank's insurance department may legally be used to satisfy any obligation of that department." If state law or regulation provides for substantially similar disclosure requirements, compliance with the state imposed disclosure requirements will satisfy the requirements of this paragraph.

(2) *Insurance underwriting.* (i) A well-capitalized insured state bank that was lawfully providing insurance as principal on November 21, 1991 may continue to provide insurance as principal in the state or states in which the bank did so on November 21, 1991 so long as the insurance that is provided is of the same type which the bank provided as of November 21, 1991 and the insurance is only offered to residents of that state, individuals employed in that state, and any other person to whom the bank provided insurance as principal without interruption since such person resided in or was employed in that state. In the case of resident companies or partnerships, the bank's as principal activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state.

(ii) Any insured state bank or any subsidiary thereof that engaged in the underwriting of insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to do so.

(3) *Activities that do not present a significant risk.* The FDIC has determined that the following as principal activities do not represent a significant risk to the deposit insurance funds and that the listed activities may therefore be conducted without first obtaining the FDIC's prior consent pursuant to § 362.4(c):

(i) *Guarantee activities.* (A) An insured state bank that meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency, if otherwise authorized to do so, may directly guarantee the obligations of others as provided for in § 347.3(c)(1) of this chapter; and

(B) An insured state bank that meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency, if otherwise authorized to do so, may directly offer customer-sponsored credit card programs, and similar arrangements, in which the insured state bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers, *provided, however,* that the bank must establish the creditworthiness of the individual before undertaking to guarantee his/her obligations.

(ii) *Activities that are closely related to banking.* An insured state bank that meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate Federal banking agency, if otherwise authorized to do so, may engage as principal indirectly through a subsidiary in any activity that is not permissible for a subsidiary of a national bank which the Federal Reserve Board has found by regulation or order to be closely related to banking for the purposes of section 4 of the Bank Holding Company Act (12 U.S.C. 1843).

(iii) *Securities activities conducted through a subsidiary of an insured nonmember bank.* An insured nonmember bank, if otherwise authorized to do so, may conduct securities activities through a subsidiary of the bank in accordance with the requirements and restrictions of § 337.4 of this chapter in lieu of any requirement or restriction contained in this part provided that the bank meets and continues to meet the applicable minimum capital standards of part 325 of this chapter and, provided that after making any capital deduction for its investment in the subsidiary that is required to be made under § 337.4 of this chapter, the parent insured bank is adequately capitalized as that term is defined for purposes of § 325.103(b)(2) of this chapter.

(c) *Application for consent to directly, or indirectly through a subsidiary, engage as principal in an activity that is not permissible for a national bank.*—(1) *Application requirement.* (i) Except as otherwise provided by this part, after December 19, 1992, no insured state bank may directly engage as principal in any activity that is not permissible for a national bank, and no subsidiary of an insured state bank may engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the bank meets and continues to meet the applicable minimum capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the conduct of the activity by the bank and/or its subsidiary will not pose a significant risk to the affected deposit insurance fund. Applications to directly or indirectly through a subsidiary engage in otherwise prohibited activities should be filed in accordance with paragraph (c)(2) of this section.

(ii) An insured state bank must obtain the FDIC's prior consent for each subsidiary that engages as principal, or will engage as principal, in any activity that is not otherwise excepted by this part and which is not permissible for a subsidiary of a national bank.

(iii) Any insured state bank which does not meet the capital requirements set out in paragraph (c)(1)(i) of this section and which as of December 19, 1992, directly, or indirectly through a subsidiary, engaged as principal in any activity that is not permissible for a national bank or a subsidiary of a national bank must cease the impermissible activity as soon as practicable but in no event later than six months from [insert the effective date of the final regulation] unless the bank is expected to meet and does in fact attain the requisite capital level prior to that date. If the bank attains the requisite capital level by [insert a date six months from effective date of the final regulation] the bank may apply for consent to continue the activity.

(iv) All applications for consent pursuant to this part should be filed with the regional director for the Division of Supervision for the FDIC regional office in which the insured state bank's principal office is located. An insured state bank that obtained the FDIC's consent pursuant to § 333.3 of this chapter, prior to that section's repeal, to directly, or indirectly through a subsidiary, engage as principal in an activity that was otherwise not permissible under § 333.3 of this chapter and which activity is not permissible under this part without the FDIC's consent, does not need to obtain the FDIC's consent pursuant to this part in order to continue the activity.

(v) Any insured state bank which has filed an application requesting consent to directly or indirectly continue any ongoing activity may continue to engage in the activity while the application is pending provided, however, that in no case may such an insured state bank continue the activity for more than six months from [insert effective date of the final regulation] unless the FDIC grants an extension under this paragraph (c) or approval of the application has been granted.

(2) *Form and content of application.*—(i) *Form.* Applications filed pursuant to this section may be in letter form.

(iii) *Content of applications for consent to directly engage as principal in activities that are not permissible for a national bank.* (A) Applications for consent to begin for the first time to directly engage as principal in any activity that is not permissible for a national bank shall contain the following:

(*1*) A brief description of the proposed activity and the manner in which it will be conducted;

(*2*) A copy, if any, of the bank's feasibility study, financial projections and/or proposed business plan regarding the conduct of the activity;

(*3*) A citation to the statutory or regulatory authority for the bank to conduct the activity;

(*4*) A copy of the order, etc. granting approval for the bank to conduct the activity from the appropriate regulatory authority is such approval is necessary;

(*5*) An indication of the expected volume or level of the activity;

(*6*) A copy of a resolution by the bank's board of directors or trustees authorizing the conduct of the activity and the filing of the application;

(*7*) A brief description of the bank's policy and practice with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the bank (or any related interest of such a person). (The terms "director", "executive officer", "principal shareholder", and "related interest" shall have the same meaning as is relevant for the purposes of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) and § 337.3 of this chapter);

(*8*) The bank's applicable capital ratios as of the date of the filing of the application; and

(*9*) A description of the bank's expertise in the activity to be undertaken.

(B) If a request for approval is pending before a state agency or another federal agency but has yet to be granted, the bank should submit a copy of the request as filed with the appropriate regulatory authority along with the information required by paragraph (c)(2)(ii)(A) of this section. If that request substantially satisfies all of the information requirements of paragraph (c)(2)(ii)(A) of this section, the bank need not submit any additional information.

(iii) *Content of applications for consent to engage as principal through a subsidiary in activities that are not permissible for a subsidiary of a national bank.* (A) Applications for consent to begin for the first time to conduct as principal through a subsidiary activities that are not permissible for a subsidiary of a national bank shall contain the following information:

(*1*) The information described in paragraph (c)(2)(ii) of this section;

(*2*) The amount of the bank's proposed investment in, and expected extensions of credit to, the subsidiary;

(*3*) The bank's investment in, and extensions of credit to, other subsidiaries conducting the same type of activity; and

(*4*) The bank's applicable capital ratios as of the filing of the application

exclusive of the bank's investment in the subsidiary.

(B) If an insured state bank previously obtained consent for a subsidiary to engage as principal in a particular activity, any subsequent request for consent for another subsidiary of the bank to engage as principal in the same activity shall contain the following:

(*1*) A brief description of the proposed activity;

(*2*) An indication of the expected volume or level of the activity;

(*3*) The bank's applicable capital ratios as of the date of the filing of the application;

(*4*) The amount of the bank's proposed investment in, and expected extensions of credit to, the subsidiary;

(*5*) The bank's investment in, and extensions of credit to, other subsidiaries conducting the same type of activity; and

(*6*) The bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary.

(iv) *Content of applications for consent to continue ongoing activities.* (A) Applications for consent to continue to directly conduct as principal any activity that is not permissible for a national bank that was being conducted by the bank as of December 19, 1992 shall contain the following:

(*1*) A brief description of the activity and the manner in which it is presently being conducted;

(*2*) A copy of the bank's management or business plan, if any, concerning the conduct of the activity;

(*3*) An indication of the present and expected volume or level of the activity;

(*4*) A brief description of the bank's policy and practice regarding the involvement of directors, executive officers or principal shareholders, or any related interest of such person, in the activity. (The terms "director", "executive officer," "principal shareholder", and "related interest" shall have the same meaning as is relevant for the purpose of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) and § 337.3 of this chapter);

(*5*) A summary of management's expertise to conduct the activity;

(*6*) A citation of the statutory or regulatory authority to conduct the activity;

(*7*) A brief description of how, if at all, the current manner of conduct of the activity differs from that described by § 362.4(d); and

(*8*) The bank's applicable capital ratios as of the filing of the application.

(B) Applications for consent to continue to engage as principal through a subsidiary in an activity that was being conducted as of December 19, 1992 which is not permissible for a subsidiary of a national bank shall contain the following:

(*1*) The information described in paragraph (c)(2)(iv) of this section;

(*2*) A statement of the amount of the bank's investment in, and extensions of credit to, the subsidiary;

(*3*) The aggregate amount of the bank's investment in, and extensions of credit to, all such subsidiaries; and

(*4*) The bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary.

(3) *Phase-out of activities for which consent to continue has been denied.* (i) If a request filed pursuant to paragraph (c) of this section for consent to continue the direct conduct of an activity is denied, the bank must cease the activity as soon as practicable but in no event later than one year from the denial of the bank's application unless the FDIC specifically sets a different time period. The FDIC, as it deems necessary in order to protect the affected deposit insurance fund, may condition or restrict the conduct of the activity until such time as the activity is terminated.

(ii) If a request filed pursuant to paragraph (c) of this section for consent to continue the conduct of an activity through a subsidiary of the bank is denied, the bank must divest its equity investment in the subsidiary as quickly as prudently possible but in no event later than December 19, 1996. The bank shall file a divestiture plan in accordance with § 362.3(c)(3) no later than 60 days after the bank receives notice that consent was denied. In the alternative, the bank may choose to discontinue the activity rather than divest its equity investment in the subsidiary in which case the activity must be discontinued as soon as practicable but in no event later than one year from the denial. If the bank elects to discontinue the activity rather than to divest the subsidiary, the bank should notify the FDIC of that decision no later than 60 days after the bank receives notice that consent was denied. The notice must be in writing and should be filed with the appropriate FDIC regional office.

(d) *Standard conditions.* Except where specifically waived by the Board of Directors, or an FDIC official acting under delegated authority, any approval of an application filed pursuant to § 362.4(c) shall be subject to the following standard conditions:

(1) *Activity to be conducted in a subsidiary.* (i) In the case in which consent is sought for a subsidiary of an insured state bank to engage, or continue to engage, as principal in an activity that is not permissible for a subsidiary of a national bank, approval shall be conditioned upon:

(A) The subsidiary being a bona fide subsidiary; and

(B) The bank being adequately capitalized as that term is defined for the purposes of § 325.103(b)(2) of this chapter exclusive of the bank's investment in the subsidiary.

(ii) The FDIC may, in its discretion, approve an application for a subsidiary of a bank to continue an ongoing activity despite the fact that the bank would not be adequately capitalized after taking the requisite capital deduction provided that the bank is expected to be adequately capitalized no later than three years from the approval of the application taking the capital deduction into consideration. The FDIC may, furthermore in its discretion, approve an application for a subsidiary that does not meet the definition of a bona fide subsidiary to continue an ongoing activity provided that the subsidiary is expected to satisfy the necessary requirements to be a bona fide subsidiary no later than six months from the approval of the application. The FDIC may condition or restrict its discretionary approvals under this paragraph (d)(1) as necessary in order to protect the safety or soundness of the bank and the deposit insurance fund.

(2) *Activity to be conducted directly.* (i) In the case in which consent is sought to directly engage, or continue to engage, as principal in an activity that is not permissible for a national bank, approval shall be conditioned upon:

(A) The activity being conducted in a division of the bank which meets all of the criteria for a *department* as that term is defined in § 362.2(j); and

(B) The bank being adequately capitalized as that term is defined for the purposes of § 325.103(b)(2) of this chapter exclusive of the bank's investment in such department.

(ii) The FDIC may, in its discretion, approve an application for a bank to continue an ongoing activity despite the fact that the bank would not be adequately capitalized after taking the requisite capital deduction provided that the bank is expected to be adequately capitalized no later than three years from the approval of the application taking the capital deduction into consideration. The FDIC may, furthermore in its discretion, approve an application for a bank to continue the direct conduct of an activity despite the fact that the activity is not presently conducted through a division of the bank that meets the definition of a

department provided that the bank is expected to make the necessary adjustments to its operations to move the activity into a department no later than six months from the approval of the application. The FDIC may condition or restrict its discretionary approvals under this paragraph (d)(2) as necessary in order to protect the safety or soundness of the bank and the deposit insurance fund.

(e) *Restrictions on transactions with departments and bona fide subsidiaries.* The following restrictions shall apply as between an insured state bank and any of its subsidiaries that are required by this part to be bona fide subsidiaries:

(1) No insured state bank may engage in any transactions (including making extensions of credit) with any of its bona fide subsidiaries on terms or under circumstances that are less favorable than those prevailing at the time for comparable transactions with or involving companies that are not subsidiaries of the bank nor which are otherwise affiliated with the bank;

(2) No insured state bank may purchase as fiduciary any asset or product from any of its bona fide subsidiaries or obtain as fiduciary any service from any of its bona fide subsidiaries unless:

(i) Such action is expressly authorized by a trust instrument, court order, or local law, or specific authority is obtained from all interested parties after full disclosure;

(ii) Such action is otherwise consistent with the bank's fiduciary obligation; or

(iii) Such action is permissible under applicable federal and/or state statute or regulation;

(3) No insured state bank may enter into any contract with any of its bona fide subsidiaries that violates any law or regulation, results in a breach of a fiduciary duty, adversely affects or misrepresents the bank's safety or soundness, or is likely to have any such result;

(4) No insured state bank may make extensions of credit in the aggregate to any one of its bona fide subsidiaries in excess of ten percent of the bank's tier one capital. Extensions of credit made by any bank affiliate of the insured state bank to a bona fide subsidiary of the insured state bank will be considered to be made by the insured state bank. In addition, any extension of credit made by the insured state bank or any of its affiliated banks that is secured by the debt of, or equity securities issued by, the insured state bank's bona fide subsidiary shall be included in the bank's ten percent limit; and

(5) No insured state bank may make extensions of credit in the aggregate to its bona fide subsidiaries in excess of twenty percent of the bank's tier one capital. Extensions of credit made by any bank affiliate of the insured state bank to a bona fide subsidiary of the insured state bank will be considered to be made by the insured state bank. In addition, any extension of credit made by the insured state bank or any of its affiliated banks that is secured by the debt of, or equity securities issued by, any of the insured state bank's bona fide subsidiaries shall be included in the bank's aggregate twenty percent limit.

(f) *Disclosures.* Except as otherwise permitted by this part, no insured state bank may have a subsidiary or a department that engages as principal in any activity that is not permissible for a national bank unless the subsidiary or department provides any persons doing or about to do business with that subsidiary or department' written disclosure that the products, goods or services offered by the subsidiary or department are not insured by the FDIC, are not guaranteed by the bank, and that only the assets of the department or subsidiary (as the case may be) are available to satisfy the obligations of, or any contractual claims arising in connection with the operation of, the subsidiary or department. The insured state bank must obtain the signature of any person to whom disclosure is made acknowledging that such person has read the disclosure. The disclosure may be tailored to fit the particular circumstances. The following or a similar statement will satisfy the disclosure requirement in the case of a subsidiary: "_____is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank. The assets of [insert name of bank] are not available to satisfy any obligation or liability of [insert name of subsidiary]." The following or a similar statement will satisfy the disclosure requirement in the case of a department: "_____is not a federally insured deposit. Only the assets of _____ department of the bank are available to satisfy the obligations of, or any contractual claims arising in connection with the operation of, _____ department." All disclosures must occur prior to the time any contractual obligation to purchase any product, good or service arises. If state law or regulation provides for substantially similar disclosure requirements, compliance with the state imposed disclosure requirements will satisfy the requirements of this paragraph.

(g) *Conditions and restrictions applicable to insured state banks and/or their subsidiaries that engage in insurance underwriting activities excepted under § 362.3(b)(7) or § 362.4(b)(2).* (1) No insured state bank may directly or indirectly through a subsidiary underwrite insurance pursuant to the exception contained in § 362.3(b)(7) or § 362.4(b)(2) unless the following conditions and restrictions are met:

(i) Any insurance underwriting directly conducted by the bank must be done through a division of the bank that meets the definition of "department" contained in § 362.2(j);

(ii) Any subsidiary that underwrites insurance must meet the definition of a "bona fide subsidiary" contained in § 362.2(e); and

(iii) The disclosure requirements of § 362.4(g) are met.

(2) Any insured state bank or a subsidiary of an insured state bank that would be eligible for the exception in § 362.3(b)(7) or § 362.4(b)(2) but for the requirements of paragraphs (g)(1) of this section may continue to conduct its insurance underwriting activities provided that the requirements of paragraphs (g)(1)(i) and (g)(1)(ii) are met no later than one year from [insert a date one year from the effective date of the final regulation].

By Order of the Board of Directors. Dated at Washington, DC this 12th day of January 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–1473 Filed 1–28–93; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26 and 301

[PS–73–88; PS–32–90]

RIN 1545–AL75; 1545–AO89

Generation-Skipping Transfer Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to proposed regulations.

SUMMARY: This document contains a correction to proposed regulations (PS–73–88; PS–32–90), which were published Thursday, January 14, 1993, (57 FR 4372). The proposed regulations relate to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections would apply additions to the Generation-Skipping Transfer Regulations (26 CFR part 26) under sections 2601 through 2663 of the Internal Revenue Code (Code).

Need for Correction

As published, the proposed regulations contains an error which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (PS–73–88; PS–32–90), which was the subject of FR Doc. 93–661 is corrected as follows:

1. On page 4372, column 1, in the preamble the Summary is corrected to read as follows:

Summary: This document provides notice of a public hearing on proposed regulations relating to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code.

Dale D. Goode,

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

[FR Doc. 93–1804 Filed 1–28–93; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PP Docket No. 92–234; DA 93–54]

Inquiry Into Encryption Technology for Satellite Cable Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment deadline.

SUMMARY: This action extends the deadline for filing comments in PP Docket No. 92–234, an inquiry into encryption technology for satellite cable programming. The new reply comment deadline is January 26, 1993.

DATES: Comments must be filed on or before December 24, 1992 and reply comments must be filed on or before January 26, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy, (202) 653–5940.

SUPPLEMENTARY INFORMATION:

Order Extending Deadline for Filing Reply Comments

In the matter of inquiry into Encryption Technology for Satellite Cable Programming.

Adopted: January 21, 1993.
Released: January 21, 1993.

Comment Date: December 24, 1992.
Reply Comment Date: January 26, 1993.

By the Chief, Office of Plans and Policy

1. The Commission has received a "Motion for Extension of Time" in the above-captioned proceeding from General Instrument Corporation (GIC). GIC has requested extension of the reply comment deadline from January 22 to January 29. In support of its request, GIC notes that, because the Commission closed early on December 24, 1992, certain comments were not filed until December 28, 1992, the next business day. (Friday, December 25 was a holiday.) For this reason, some comments, including those of Titan Satellite Systems Corporation, were not available to GIC until December 29. Because of this delay, and because another holiday and the Presidential Inaugural events are also within the reply comment period, GIC believes that an extension is warranted. Good cause for an extension having been shown, *It is ordered*, That the deadline for reply comments in PP Docket No. 92–234 is extended to Tuesday, January 26, 1993. This additional filing time will compensate for the delay imposed on participants in this proceeding by the Commission's early closing on December 24, 1992. This action is taken pursuant to section 4(i) of the Communications Act of 1934, as amended, under authority delegated to the Chief, Office of Plans and Policy by § 0.271 of the Commission's Rules, 47 CFR 0.271.

Federal Communications Commission.

Robert Pepper,

Chief, Office of Plans and Policy.

[FR Doc. 93–2097 Filed 1–28–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 37

[Docket 48463; Notice 93–4]

RIN 2105–AB53

Transportation for Individuals With Disabilities

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Extension of comment period.

SUMMARY: The Department is extending the comment period on its notice of proposed rulemaking to amend its Americans with Disabilities Act (ADA) regulation. The NPRM proposed changes in the provisions of the ADA rule with respect to detectable warnings in key rail stations, use of vehicle lifts by standees, and other issues. The extension is in response to requests from groups representing individuals with vision impairments for additional time to review the proposed rule and formulate comments.

DATES: Comments are requested by February 18, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 48463, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD), or Susan Schruth, Office of Chief Counsel, Federal Transit Administration, same address, room 9316. (202) 366–4011 (voice); (202) 366–2979 (TDD).

SUPPLEMENTARY INFORMATION: The Department of Transportation published a notice of proposed rulemaking (NPRM) to amend its Americans with Disabilities Act (ADA) rule on November 17, 1992 (57 FR 54210). Among other things, the NPRM proposed to postpone the compliance date for the installation of detectable warnings in key rail stations from July 26, 1993, to January 26, 1995. It also proposed to require transit providers to permit standees only on certain vehicle lifts (i.e., those meeting ADA standards or others that had handrails or other means to assist standees in maintaining their balance). The original 60-day comment period for this NPRM would end January 19, 1993.

The Department has received two requests from groups representing individuals with vision impairments to extend the comment period for an additional 60 days, in order to permit the groups and their constituents adequate time to review copies of the NPRM made available in accessible formats and to formulate comments on the proposal. The Department believes that it would be beneficial to extend the

comment period for a time, in order to ensure that it will have the benefit of thoughtful comments from the widest possible spectrum of interested parties. At the same time, it is important for the Department to resolve the important issues raised in this NPRM expeditiously, in order to provide certainty to affected parties (e.g., rail operators who, under the existing regulation, are obliged to complete installation of detectable warnings by July 26, 1993). For these reasons, the Department has determined that a 30-day extension is appropriate. The comment period will now close on February 18, 1993. As is typically the case with DOT rulemakings, late-filed comments will be considered to the extent practicable.

Issued this 19th day of January 1993 at Washington, DC.

Walter B. McCormick, Jr.,

General Counsel, Department of Transportation.

[FR Doc. 93–1825 Filed 1–?8–93; 8·45 am]

BILLING CODE 4910–62–M

Notices

Federal Register
Vol. 58, No. 18
Friday, January 29, 1993

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

Office of the Secretary

Agricultural Advisory Committees for Trade; Renewal

SUBJECT: Renewal of Agricultural Advisory Committees for Trade.

ACTION: Notice.

Notice is hereby given that the Secretary of Agriculture, after consultation with the United States Trade Representative, has renewed the following advisory committees: Agricultural Policy Advisory Committee for Trade and ten separate Agricultural Technical Advisory Committees for Trade in: Cotton, Dairy Products, Fruits and Vegetables, Grain and Feed, Livestock and Livestock Products, Oilseeds and Products, Poultry and Eggs, Processed Foods, Sweeteners, and Tobacco.

The purpose of these committees is to provide advice to the Secretary and the U.S. Trade Representative with respect to the trade policy of the United States pursuant to section 135(c) of the Trade Act of 1974 (Pub. L. 93–618) as amended. Meetings of these committees will be open only to members of the committees in accordance with matters listed in section 552b(c) of title 5 of the United States Code unless otherwise determined.

The renewal of such committees is in the public interest in connection with the duties of the Department imposed by the Trade Act of 1974, as amended.

Comments regarding the renewal of these committees should be addressed to Anne Joslin, Foreign Agriculture Service, United States Department of Agriculture, room 5065–S, Washington, DC 20250–1000.

Issued at Washington, DC, this 21st day of January.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 93–2125 Filed 1–28–93; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Direct Transactions of U.S. Reporter with Foreign Affiliate.

Agency Form Number: BE–577.

OMB Approval Number: 0608–0004.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 42,000 hours.

Number of Respondents: 10,500 respondents (4 responses per respondent).

Avg Hours Per Response: 1 hour.

Needs and Uses: This survey collects sample data on transactions and positions between U.S. parent companies and their foreign affiliates. Universe estimates are developed from the reported sample data. The data are needed for compiling the U.S. balance of payments accounts, the international investment position of the United States, and the national income and product accounts. They are also needed to measure the size of U.S. direct investment abroad, monitor changes in such investment, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding U.S. direct investment abroad.

Affected Public: Businesses or other for–profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, (202) 395–3093, room 3228, New Executive Office Building, Washington, DC 20503.

Agency: International Trade Administration (ITA).

Title: Trade Fair Certification (TFC) Program: Application, Show Organizer and Quality Assurance Surveys.

Agency Form Numbers: ITA–4100P, ITA–4103P, and ITA–4124P.

OMB Approval Number: 0625–0130.

Type of Request: Revision of a currently approved collection.

Burden: 756 hours.

Avg Hours Per Response: 10.25 hours for ITA Form 4100P; 1 hour for ITA Form 4103P; and 10 minutes for ITA Form 4124P.

Needs and Uses: The U.S. Department of Commerce's Trade Fair Certification (TFC) program provides Department of Commerce endorsement and support for private sector–recruited and organized foreign trade shows. Certifying a trade show means the Commerce Department, through its U.S. and Foreign Commercial Service (US&FCS), certifies or endorses a qualified foreign trade event as a good and proven opportunity to promote U.S. exports. Certification also provides endorsement of the U.S. show organizer or agent as a reliable firm capable of effectively recruiting and managing a U.S. Pavilion or group of exhibitors at a specific show. Approximately 45 trade events are certified annually. The information collection enables the Department to determine which services provide real value–added assistance to an organizer and identify program strengths and weaknesses so that improvements can be made.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340, room 3208, New Executive Office Building, Washington, DC 20503.

Agency: National Institute of Standards and Technology (NIST).

Title: State Technology Extension Program.

Agency Form Number: None.

OMB Approval Number: 0693–0010.

Type of Request: Reinstatement of a previously approved collection.

Burden: 1,200 hours.

Number of Respondents: 30.

Avg Hours Per Response: 40 hours.

Needs and Uses: In accordance with time provisions of the Omnibus Trade Competitiveness Act of 1988, NIST seeks to announce the availability of funds, and request proposals for funding under the State Technology Extension Program. The purpose of the

information collection is to secure sufficient information from proposers to make it possible for NIST to determine applicant eligibility and select awardees.

Affected Public: Non–profit institutions, state and local governments.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, room 3235, New Executive Office Building, Washington, DC 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the appropriate Desk Officer listed above.

Dated: January 22, 1993

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–2107 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–570–807]

Oscillating and Ceiling Fans From the People's Republic of China: Notice of Court Decision and Revocation of Antidumping Duty Order on Oscillating Fans

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On November 12, 1992, the United States Court of International Trade ("CIT") affirmed the Department of Commerce's ("Commerce") remand determination. *Holmes Products Corp.* v. *United States,* No. 91–12–00906, Slip Op. 92–203 (CIT November 12, 1992). The CIT's opinion has not been appealed. The remand resulted in a finding of a *de minimis* margin and a negative determination of sales at less-than-fair value for the investigation. Therefore, the antidumping duty order on oscillating fans from the People's Republic of China ("PRC") is hereby revoked.

EFFECTIVE DATE: November 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377–3003.

SUPPLEMENTARY INFORMATION:

Background

In December 1991, Commerce published the antidumping duty order and amended final determination of sales at less-than-fair value for oscillating fans from the PRC. Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China, 56 FR 64240 (December 9, 1991). A respondent, which was comprised of two companies, Holmes Products Corp. and Esteem Industries LTD ("Holmes/Esteem"), instituted an action challenging Commerce's final determination. On July 24, 1992, the Court of International Trade issued *Holmes Products Corp* v. *United States,* 795 F. Supp. 1205, Slip Op. 92–118 (July 24, 1992), which remanded the determination to Commerce. Upon remand, Commerce determined that Holmes/Esteem had a *de minimis* margin, pursuant to 19 CFR 353.6, and that the final results of the less-than-fair value investigation were negative. This remand was affirmed by the CIT on November 12, 1992. *Holmes Products Corp.* v. *United States,* No. 91–12–00906, Slip Op. 92–203 (CIT November 12, 1992). The remand results were not appealed. Therefore, the antidumping duty order on oscillating fans from the People's Republic of China ("PRC") is hereby revoked.

Termination of Suspension of Liquidation

Pursuant to 19 U.S.C. 1516a(c), the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation and to proceed with liquidation of the merchandise which entered the United States after November 22, 1992, without regard to antidumping duties.

Dated: January 25, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2182 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–333–001]

Cotton Sheeting and Sateen From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on cotton sheeting and sateen from Peru.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 4596) its intent to revoke the countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501; February 1, 1983). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On February 7, 1992, The American Textile Manufacturers Institute (ATMI) and certain of its member companies objected to our intent to revoke the order. On March 16, 1992, the Government of Peru questioned ATMI's and its member companies' standing to object to revocation as interested parties under 19 CFR 355.2(i). However, the Department concluded that ATMI and its member companies meet the definition of interested parties and has accepted their objection to revocation. See "Memorandum To: The File (C–333–001)" dated October 15, 1992. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: January 22, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–2155 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–333–002]

Cotton Yarn From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of determination not to revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on cotton yarn from Peru.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 4597) its intent to revoke the countervailing duty order on cotton yarn from Peru (48 FR 4508; Peru (48 FR 4501; February 1, 1983). Under 19 CFR 355.25(d)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On February 7, 1992, The American Textile Manufacturers Institute (ATMI) and certain of its member companies objected to our intent to revoke the order. On March 16, 1992, the Government of Peru questioned ATMI's and its member companies' standing to object to revocation as interested parties under 19 CFR 355.2(i). However, the Department concluded that ATMI and its member companies meet the definition of interested parties and has accepted their objection to revocation. See "Memorandum To: The File (C–333–001)" dated October 15, 1992. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: January 21, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–2156 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

[Project I.D. No. 08–10–93005–01]

Business Development Center Applications: Denver MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $184,268 in Federal funds. An audit fee of $4,607 has been added to the Federal amount. The total funding breakdown is as follows: $188,867 Federal and $33,329 non-Federal for a total of $222,196. The period of performance will be from May 1, 1993 to April 30, 1994. The MBDC will operate in the Denver, Colorado MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any

time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is January 29, 1993. Applications must be postmarked on or before January 29, 1993.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., Room 7B23, Dallas, Texas 75242.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767–8001. Requests for application kit must be in writing.

A pre-bid conference will be held on January 15, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 4, 1992.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–2254 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council (Council) will hold its 77th regular Council meeting on February 10–11, 1993, at the Conference Room, Ponce Hilton Hotel, 14 Santiago de los Caballeros Avenue, La Guancha, Ponce, Puerto Rico. The meeting will be held from 9 a.m. until 5 p.m. on February 10, and from 9 a.m. until 12 noon on February 11.

The Council will meet to make final decisions regarding the Second Amendment to the Shallow-Water Reef Fish FMP. The meeting will be conducted in the English language with simultaneous translation in Spanish. Fishermen and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda items.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: 809–766–5926.

Dated: January 22, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–2138 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team and Advisory Subpanel will hold a public meeting on February 10, 1993, beginning at 10 a.m. The meeting will be held in the small conference room at the California Department of Fish and Game, 330 Golden Shore, suite 50, Long Beach, CA.

The purpose of this meeting is to discuss the status of the Coastal Pelagic Species Fishery Management Plan.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117.

Dated: January 22, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–2139 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Kit, Survival
6545–00–139–3671
Nonprofit Agency: Opportunity Resources, Inc., Missoula, Montana

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–2189 Filed 1–28–93; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Addition

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 1, 1993.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 30, 1992 the Committee for Purchase from People who are Blind or Severely Disabled published notice (57 FR 56569) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Federal Center, 74 North Washington Avenue, Battle Creek, Michigan

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–2188 Filed 1–28–93; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and service to the Procurement List for production by the nonprofit agencies listed:

Commodities

Walker, Invalid
6530–00–085–1814
6530–01–183–3607
Nonprofit Agency: Human Technologies Corp., Utica, New York

Towel, Machinery Wiping
7920–01–370–1365
7920–01–370–1366
Nonprofit Agency: East Texas Lighthouse for the Blind, Tyler, Texas

Service

Food Service, Naval Station, Pascagoula, Mississippi
Nonprofit Agency: Goodwill Industries of South Mississippi, Inc., Gulfport, Mississippi

Deletions

It is proposed to delete the following commodities from the Procurement List:

Shirt, Operating, Surgical
6532–00–299–9627
Dining Packet, Tray Pack

7360-01-J19-2026

Beverly L. Milkman,

Executive Director.

[FR Doc. 93-2187 Filed 1-28-93; 8:45 am]

BILLING CODE 6820-33-M

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act; Pollution Prevention

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only—memorandum to head of Federal departments and agencies regarding pollution prevention and the National Environmental Policy Act.

SUMMARY: This memorandum provides guidance to the federal agencies on incorporating pollution prevention principles, techniques, and mechanisms into their planning and decisionmaking processes and evaluating and reporting those efforts in documents prepared pursuant to the National Environmental Policy Act.

FOR FURTHER INFORMATION CONTACT: Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503. Telephone: 202/395-5754.

SUPPLEMENTARY INFORMATION:

Memorandum

To: Heads of Federal Departments and Agencies
From: Michael R. Deland
Subject: Pollution Prevention and the National Environmental Policy Act
Date: January 12, 1993

Introduction

Although substantial improvements in environmental quality have been made in the last 20 years by focusing federal energies and federal dollars on pollution abatement and on cleaning up pollution once it has occurred, achieving similar improvements in the future will require that polluters and regulators focus more on their efforts on pollution prevention. For example, reducing non-point source pollution—such as runoff from agricultural lands and urban roadways—and addressing cross-media environmental problems—such as the solid waste disposal problem posed by the sludge created in the abatement of air and water pollution—may not be possible with "end-of-the-pipe" solutions.

Pollution prevention techniques seek to reduce the amount and/or toxicity of pollutants being generated. In addition, such techniques promote increased efficiency in the use of raw materials and in conversation of natural resources and can be a most cost-effective means of controlling pollution than does direct regulation. Many strategies have been developed and used to reduce pollution and protect resources, including using fewer toxic inputs, redesigning products, altering manufacturing and maintenance processes, and conserving energy.[1]

This memorandum seeks to encourage all federal departments and agencies, in furtherance of their responsibilities under the National Environmental Policy Act (NEPA), to incorporate pollution prevention principles, techniques, and mechanisms into their planning and decisionmaking processes and to evaluate and report those efforts, as appropriate, in documents prepared pursuant to NEPA.

Background

NEPA provides a longstanding umbrella for a renewed emphasis on pollution prevention in all federal activities. Indeed, NEPA's very purpose is "to promote efforts which will prevent or eliminate damage to the environment * * *." 42 U.S.C. 4321.

Section 101 of NEPA contains Congress' express recognition of "the profound impact of man's activity on the interrelations of all components of the natural environment" and declaration of the policy of the federal government "to use all practicable means and measures * * * to create and maintain conditions under which man and nature can exist in productive harmony * * *." 42 U.S.C. 4331(a). In order to carry out this environmental policy, Congress required all agencies of the federal government to act to preserve, protect, and enhance the environment. See 42 U.S.C. 4331(b).

Further, section 102 of NEPA requires the federal agencies to document the consideration of environmental values in their decisionmaking in "detailed statements" known as environmental impact statements (EIS). 42 U.S.C. 4332(2)(c)). As the United States Supreme Court has noted, the "sweeping policy goals announced in section 101 of NEPA are thus realized through a set of 'action-forcing' procedures that require that agencies take a 'hard look' at environmental consequences." *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332 (1989).

The very premise of NEPA's policy goals, and the thrust for implementation of those goals in the federal government through the EIS process, is to avoid, minimize, or compensate for adverse environmental impacts before an action is taken. Virtually the entire structure of NEPA compliance has been designed by CEQ with the goal of preventing, eliminating, or minimizing environmental degradation. Thus, compliance with the goals and procedural requirements of NEPA, thoughtfully and fully implemented, can contribute to the reduction of pollution from federal projects, and from projects funded, licensed, or approved by federal agencies.

Defining Pollution Prevention

CEQ defines and uses the term "pollution prevention" broadly. In keeping with NEPA and the CEQ regulations implementing the procedural provisions of the statute, CEQ is not seeking to limit agency discretion in choosing a particular course of action, but rather is providing direction on the incorporation of pollution prevention considerations into agency planning and decisionmaking.

"Pollution prevention" as used in this guidance includes, and is not limited to, reducing or eliminating hazardous or other polluting inputs, which can contribute to both point and non-point source pollution; modifying manufacturing, maintenance, or other industrial practices; modifying product designs; recycling (especially in-process, closed loop recycling); preventing the disposal and transfer of pollution from one media to another; and increasing energy efficiency and conservation. Pollution prevention can be implemented at any stage—input, use or generation, and treatment—and may involve any technique—process modification, waste stream segregation, inventory control, good housekeeping or best management practices, employee training, recycling, and substitution. Indeed, any reasonable mechanism which successfully avoids, prevents, or reduces pollutant discharges or emissions other than by the traditional method of treating pollution at the discharge end of a pipe or a stack should, for purposes of this guidance, be considered pollution prevention.[2]

[1] For a discussion of such strategies and activities, see the Council on Environmental Quality's 20th *Environmental Quality* report, at 215-257 (1989); 21st *Environmental Quality* report, at 79-133 (1990); and 22nd *Environmental Quality* report, at 151-158 (1991).

[2] It should be noted that EPA, in accordance with the Pollution Prevention Act of 1990 (Pub. L. 101-508, 6601 *et seq.*), uses a different definition, one which describes pollution prevention in terms of source reduction and other practices which reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials,

Federal Agency Responsibilities

Pursuant to the policy goals found in NEPA section 101 and the procedural requirements found in NEPA section 102 and in the CEQ regulations, the federal departments and agencies should take every opportunity to include pollution prevention considerations in the early planning and decisionmaking processes for their actions, and, where appropriate, should document those considerations in any EISs or environmental assessments (EA) prepared for those actions.[3] In this context, federal actions encompass policies and projects initiated by a federal agency itself, as well as activities initiated by a non-federal entity which need federal funding or approval. Federal agencies are encouraged to consult EPA's Pollution Prevention Information Clearinghouse which can serve as a source of innovative ideas for reducing pollution.

1. Federal Policies, Projects, and Procurements

The federal government develops and implements a wide variety of policies, legislation, rules, and regulations; designs, constructs, and operates its own facilities; owns and manages millions of acres of public lands; and has a substantial role as a purchaser and consumer of commercial goods and services—all of these activities provide tremendous opportunities for pollution prevention which the federal agencies should grasp to the fullest extent practicable. Indeed, some agencies have a already begun their own creative pollution prevention initiatives:

Land Management

The United States Forest Service has instituted best management practices on several national forests. These practices include leaving slash and downed logs in harvest units, maintaining wide buffer zones around streams, and encouraging biological diversity by mimicking historic burn patterns and other natural processes in timber sale design and layout. The beneficial effects have been a reduction in erosion, creation of fish and wildlife habitat, and the elimination of the need to burn debris after logging—in other words, a reduction of air and water pollution.

The National Park Service and the Bureau of Reclamation have implemented integrated pest management programs which minimize or eliminate the use of pesticides. In addition, in some parks storm water runoffs from parking lots have been eliminated by replacing asphalt with the use of a "geo-block" system (interlocking concrete blocks with openings for grass plantings). The lot is mowed as a lawn but has the structural strength to support vehicles.

The Tennessee Valley Authority (TVA) has developed a transmission line right-of-way maintenance program which requires buffer zones around sensitive areas for herbicide applications and use of herbicides which have soil retention properties which allow less frequent treatment and better control. TVA is also testing whole tree chipping to clear rights-of-way in a single pass application, allowing for construction vehicle access but reducing the need for access roads with the nonpoint source pollution associated with leveling, drainage, or compaction. In addition, TVA is using more steel transmission line poles to replace traditional wooden poles which have been treated with chemicals.

For construction projects it undertakes, the Department of Veterans Affairs discusses in NEPA documents and implements pollution prevention measures such as oil separation in storm water drainage of parking structures, soil erosion and sedimentation controls, and the use of recycled asphalt.

Office Programs

Many agencies, including the Department of Agriculture's Economic Research Service and Soil Conservation Service, Department of the Army, Department of the Interior, Consumer Product Safety Commission, and Tennessee Valley Authority, have implemented pollution prevention initiatives in their daily office activities. These initiatives embrace recycling programs covering items such as paper products (e.g., white paper, newsprint, cardboard), aluminum, waste oil, batteries, tires, and scrap metal; procurement and use of "environmentally safe" products and products with recycled material content (e.g., batteries, tires, cement mixed with fly ash and recycled oil, plastic picnic tables); purchase and use of alternative-fueled vehicles in agency fleets; and encouragement of carpooling with employee education programs and locator assistance.

In planning the relocation of its headquarters, the Consumer Product Safety Commission (CPSC) is considering only buildings located within walking distance of the subway system as possible sites. By conveniently siting its headquarters facility, CPSC expects to triple the number of employees relying on public transportation for commuting and to substantially increase the number of agency visitors using public transportation for attendance at agency meetings or events.

Waste Reduction

The Department of Energy (DOE) has instituted an aggressive waste minimization program which has produced substantial results. DOE's nuclear facilities have reduced the sizes of radiological control areas in order to reduce low-level radioactive waste. Other facilities have scrap metal segregation programs which reduce solid waste and allow useable material to be sold and recycled. DOE facilities also are replacing solvents and cleaners containing hazardous materials with less or non-toxic materials.

The Department of the Army has a similar waste reduction program and is vigorously pursuing source reduction changes to industrial processes to eliminate toxic chemical usage that ultimately generates hazardous wastes. The Army's program includes material substitution techniques as well as alternative application technologies. For example, in an EIS and subsequent record of decision for proposed actions on Kwajalein Atoll, the Army committed to segregate solvents from waste oils in the Kwajalein power plant which will prevent continual contamination of large quantities of used engine oil with solvents. Oil recycling equipment will also be installed on power plant diesel generators allowing reuse of waste oil.

The Federal Aviation Administration (FAA) has also implemented a waste minimization program designed to eliminate or reduce the amount and toxicity of wastes generated by all National Airspace System facilities. This program includes using chemical life extenders and recycling additives to reduce the quantity and frequency of wastes generated at FAA facilities and providing chlorofluorocarbon (CFC) recycling equipment to each sector in

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energy, water, or other resources or the protection of natural resources by conservation. "Source reduction" is defined as any practice which reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, treatment, or disposal and which reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

[3] Under section 309 of the Clean Air Act (42 U.S.C. 7609), EPA is directed to review and comment on all major federal actions, including construction projects, proposed legislation, and proposed regulations. In addition, the Pollution Prevention Act of 1990 directs EPA to encourage source reduction practices in other federal agencies. EPA is using this authority to identify opportunities for pollution prevention in the federal agencies and to suggest how pollution prevention concepts can be addressed by the agencies in their EISs and incorporated into the wide range of government activities.

the FAA to that CFCs used in industrial chillers, refrigeration equipment, and air conditioning units can be recaptured, recycled, and reused.

Inventory Control

DOS is improving procurement and inventory control of chemicals and control of materials entering radiologically controlled areas. This can minimize or prevent non-radioactive waste from entering a radioactive waste stream, thus reducing the amount of low-level waste needing disposal.

In two laboratories operated by the Consumer Product Safety Commission, pollution prevention is being practiced by limiting quantities of potentially hazardous materials on hand.

The Tennessee Valley Authority's nuclear program has established a chemical traffic control program to control the use of disposal of hazardous materials. As a result of the program, hazardous materials are being replaced by less hazardous alternatives and use of hazardous chemicals and products has been reduced by 66%.

2. Federal Approvals

In addition to initiating their own policies and projects, federal agencies provide funding in the form of loans, contracts, and grants and/or issue licenses, permits, and other approvals for projects initiated by private parties and state and local government agencies. As with their own projects and consistent with their statutory authorities, federal agencies could urge private applicants to include pollution prevention considerations into the siting, design, construction, and operation of privately owned and operated projects. These considerations could then be included in the NEPA documentation prepared for the federally-funded or federally-approved project, and any pollution prevention commitments made by the applicant would be monitored and enforced by the agency. Thus, using their existing regulatory authority, federal agencies can effectively promote pollution prevention throughout the private sector. Below are some existing examples of incorporation of pollution prevention into federal approvals:

The Nuclear Regulatory Commission has required licensees to perform mitigation measures during nuclear power plant construction. These measures include controlling drainage by means of ditches, berms, and sedimentation basins; prompt revegetation to control erosion; and stockpiling and reusing topsoil. Similarly, mitigation measures required during the construction of transmission facilities include the removal of vegetation by cutting and trimming rather than bulldozing and avoiding multiple stream crossings, wet areas, and areas with steep slopes and highly erodible soils. The mitigation conditions in licenses serve to prevent pollution from soil erosion and to minimize waste from construction.

In the implementation of its programs, the Department of Agriculture encourages farmers to follow management practices designed to reduce the environmental impacts of farming. Such practices include using biological pest controls and integrated pest management to reduce the toxicity and application of pesticides, controlling nutrient loadings by installing buffer strips around streams and replacing inorganic fertilizers with animal manures, and reducing soil erosion through modified tillage and irrigation practices. Further, encouraging the construction of structures such as waste storage pits, terraces, irrigation water conveyances or pipelines, and lined or grassed waterways reduces runoff and percolation of chemicals into the groundwater.

The Department of Transportation's Maritime Administration is conducting research on a Shipboard Piloting Expert System. If installed on vessels, this system would provide a navigation and pilotage assistance capability which would instantly provide warnings to a ship master or pilot of pending hazards and recommended changes in vessel heading to circumvent the hazard. The system could prevent tanker collisions or groundings which cause catastrophic releases of pollutants.

The Department of the Interior's Minerals Management Service (MMS) prepares EISs which examine the effects of potential Outer Continental Shelf (OCS) oil exploration on the environment and the various mitigation measures that may be needed to minimize such effects. Some pollution prevention measures which are analyzed in these EISs and which have been adopted for specific lease sales include measures designed to minimize the effects of drilling fluids discharge, waste disposal, oil spills, and air emissions. For example, MMS requires OCS operations to use curbs, gutters, drip pans, and drains on drilling platforms and rig decks to collect contaminants such as oil which may be recycled.

Incorporating Pollution Prevention Into NEPA Documents

NEPA and the CEQ regulations establish a mechanism for building environmental considerations into federal decisionmaking. Specifically, the regulations require federal agencies to "integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts." 40 CFR 1501.2. This mechanism can be used to incorporate pollution prevention in the early planning stages of a proposal.

In addition, prior to preparation of an EIS, the federal agency proposing the action is required to conduct a scoping process during which the public and other federal agencies are able to participate in discussions concerning the scope of issues to be addressed in the EIS. See 40 CFR 1501.7. Including pollution prevention as an issue in the scoping process would encourage those outside the federal agency to provide insights into pollution prevention technologies which might be available for use in connection with the proposal or its possible alternatives.

Pollution prevention should also be an important component of mitigation of the adverse impacts of a federal action. To the extent practicable, pollution prevention considerations should be included in the proposed action and in the reasonable alternatives to the proposal, and should be addressed in the environmental consequences section of the EIS. See 40 CFR 1502.14(f), 1502.16(h), and 1508.20.

Finally, when an agency reaches a decision on an action for which an EIS was completed, a public record of decision must be prepared which provides information on the alternatives considered and the factors weighed in the decisionmaking process. Specifically, the agency must state whether all practicable means to avoid or minimize environmental harm were adopted, and if not, why they were not. A monitoring and enforcement program must be adopted if appropriate for mitigation. See 40 CFR 1505.2(c). These requirements for the record of decision and for monitoring and enforcement could be an effective means to inform the public of the extent to which pollution prevention is included in a decision and to outline how pollution prevention measures will be implemented.

A discussion of pollution prevention may also be appropriate in an EA. While an EA is designed to be a brief discussion of the environmental impacts of a particular proposal, the preparer could also include suitable pollution prevention techniques as a means to lessen any adverse impacts identified.

See 40 CFR 1508.9. Pollution prevention measures which contribute to an agency's finding of no significant impact must be carried out by the agency or made part of a permit or funding determination.

Conclusion

Pollution prevention can provide both environmental and economic benefits, and CEQ encourages federal agencies to consider pollution prevention principles in their planning and decisionmaking processes in accordance with the policy goals of NEPA Section 101 and to include such considerations in documents prepared pursuant to NEPA section 102, as appropriate.[4] In its role as a regulator, a policymaker, a manager of federal lands, a grantor of federal funds, a consumer, and an operator of federal facilities which can create pollution, the federal government is in a position to help lead the nation's efforts to prevent pollution before it is created. The federal agencies should act now to develop and incorporate pollution prevention considerations in the full range of their activities.

David B. Struhs,

Chief of Staff.

[FR Doc. 93–2104 Filed 1–28–93; 8:45 am]

BILLING CODE 3125–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0058]

Clearance Request for Schedules for Construction Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0058).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Schedules for Construction Contracts.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal construction contractors may be required to submit schedules, in the form of a progress chart, showing the order in which the contractor proposes to perform the work. Actual progress shall be entered on the chart as directed by the contracting officer. This information is used to monitor progress under a Federal construction contract when other management approaches for ensuring adequate progress are not used.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,500; responses per respondent, 2; total annual responses, 5,200; preparation hours per response, 1; and total response burden hours, 5,200.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0058, Schedules for Construction Contracts, in all correspondence.

Dated: January 21, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–2148 Filed 1–28–93; 8:45 am]

BILLING CODE 6820–34–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Architecture & Assessment Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 24 February 1993, at Headquarters ACC, Langley AFB, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to gather information, receive briefings on issues related to theater air defense. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 93–2199 Filed 1–28–93; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: February 22–23, 1993, from 8:30 a.m. to 5 p.m. each day.

ADDRESS: The meeting will be held at the Sheraton Inn Tampa, 7401 East Hillsboro Avenue, Tampa, Florida, 33610, 813/626–0999.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The meeting is open to the public. The agenda of the Executive Committee of the National Advisory Council on Indian Education includes finalizing recommendations for consideration by the Department of Education and the Congress relative to the reauthorization of the Office of Elementary and Secondary Education (OESE) Act. The current Act is due to expire on October 1, 1993. Additionally the Executive Committee will finalize dates and locations for a series of hearings to be held in conjunction with the

[4] As a guidance document, this memorandum does not impose any new legal requirements on the agencies and does not require any changes to be made to any existing agency environmental regulations.

reauthorization of the Act. The hearings will allow Indian communities with the opportunity to comment on various aspects of the Office of Elementary and Secondary Education Act.

The second day of the meeting permits the Executive Committee to finalize any discussions and/or actions from the previous day. The agenda also includes a review of the projected Council budget and activities for fiscal year 1994. Time is permitted on the agenda for interested individuals to address the Executive Committee with any concerns related to the reauthorization of the Office of Elementary and Secondary Education Act.

Records are kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556 from the hours of 8 a.m. to 6 p.m. (e.s.t.), Monday through Friday.

Dated: January 14, 1993.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 93–2192 Filed 1–28–93; 8:45 am]

BILLING CODE 4000–01–M

Privacy Act of 1974; Amendment to the Investigative Files of the Inspector General System of Records (System Number 18–10–0001)

AGENCY: Department of Education.

ACTION: Notice of changes to purpose clause and routine uses.

SUMMARY: On January 17, 1992, the Department (ED) published a notice of an altered system of records known as the Investigative Files of the Inspector General ED/OIG. The primary changes involved the routine uses for the information in the system, and the Department solicited comments on these changes. The only comments received came from the Office of Management and Budget (OMB), and certain changes discussed in the supplementary information section of this document were made to respond to the OMB comments.

DATES: This altered system of records will become effective January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Strong, U.S. Department of Education, 400 Maryland Avenue SW., room 4115, Switzer Building, Washington, DC 20202–1510. 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: The Department published in the Federal Register on January 17, 1992 (57 FR 2083), a notice of an altered system of records for the system of records known as the Investigative Files of the Inspector General ED/OIG. Comments were received from the Office of Management and Budget. As a result of receiving the OMB comments, the Department has not implemented the changes to the system of records as published on January 17, and, therefore, the routine uses currently in effect for this system of records are those that predated the January 17th notice. The following summarizes the OMB comments and the actions taken.

Purpose clause: The purpose clause for this system of records was amended as a result of the comments received from OMB regarding one of the routine uses. A routine use authorizes disclosure of records consistent with the purposes for which the records were collected. The routine uses for this system are appropriate and compatible with the purpose for which these records are collected in that they provide for disclosure to assist this agency and other governmental agencies and professional organizations in taking responsible action that will safeguard the public and combat fraud, waste, and abuse. This is fully consistent with the mandate of the Inspector General Act of 1978, 5 U.S.C. app. 3, to combat fraud, waste, and abuse and to coordinate with other governmental agencies and nongovernmental entities in doing so. In an effort to make clear this rationale, the "Purpose" statement has been amended to add a specific reference to this Office of Inspector General (OIG) responsibility under the Inspector General Act to coordinate relationships with other Federal agencies, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG.

Routine use (a): OMB suggested that routine use (a) (Disclosure for use by other law enforcement agencies) was too vague and should more closely conform with the existing routine use for law enforcement disclosure. Accordingly, ED has revised this routine use to incorporate language from the current version of the routine use. The intention of this routine use is to allow the Office of Inspector General to continue to perform its statutory duty to refer evidence of fraud, waste, and abuse to the appropriate law enforcement authorities without running afoul of the holding in *Covert* v. *Harrington*, 667 F. Supp. 730 (E.D. Wash.), *affirmed on other grounds*, 876 F.2d 761 (9th Cir. 1989). The revised language is also intended to make clear that once a threshold standard is met (that is, that records in the system, alone or in conjunction with other information, indicate a violation or potential violation of law), all relevant information may be disclosed, not just information that is evidence of a violation. The new language recognizes that the recipient enforcement authority will have a legitimate need for a broader range of information than simply the direct evidence of the violation. For example, disclosure under this routine use would include information on witness credibility and likely defenses.

Routine use (c): OMB commented that the disclosures contemplated by this routine use (Disclosure for use in employment, employee benefit, security clearance, and contracting decisions both by ED and by other public agencies and professional organizations) should be made only with the consent of the individual. The Department agrees that it is generally preferable to make disclosures with consent, and consents will be solicited as a prerequisite to disclosure if practical. However, obtaining consent is not always practicable in the circumstances covered by this routine use. In an effort to circumscribe disclosure under this routine use without unduly compromising the OIG's duties and responsibilities, the routine use has been modified to delete authority for disclosure if it is practical to get a consent from the individual for disclosure.

With regard to routine use (c)(1) (Disclosures for Decisions by ED), disclosures for hiring and the issuance of a security clearance have been deleted because standard Government application forms provide the consents necessary, and it is within ED's power to require the consents as a prerequisite to hiring and granting a security clearance. In addition, because the Department of Education does not issue licenses, the authorization to disclose information from this file for licensing decisions by ED has been removed.

With regard to routine use (c)(2) (Disclosures for decisions by other public agencies and professional licensing organizations), the routine use has been modified to provide that for decisions regarding hiring and the granting of a security clearance, unconsented disclosure may not be made because it is within the capability of a requesting entity to obtain a consent from the individual. However, even in

these cases, there may be circumstances under which the entity is unaware that this system of records contains information relevant to its decision. Accordingly, for hiring decisions and decisions about the granting of security clearances, the modified routine use will allow disclosure only of the fact that the system contains relevant information on an individual. This disclosure would permit the other entity to obtain the consent of the individual and request the information. In addition, in response to OMB concerns about the reliability of information released from this system of records under this portion of the routine use, the routine use has been amended so that, before a disclosure may be made under paragraph (c)(2), the Inspector General or delegate must make a determination that the information in the system of records is sufficiently reliable to support a referral for criminal, civil, administrative, personnel, or regulatory action.

Finally, paragraph (c)(2) has been modified, in accordance with OMB suggestion, so that professional organizations that may be recipients thereunder are limited to those with licensing authority.

Routine use (g): This routine use has been deleted, because disclosure necessary for suspension and debarment action by other Federal agencies may be made under routine use (a) (Disclosure for use by other law enforcement agencies), and, therefore, this routine use is unnecessary.

Routine use (h): OMB commented that this routine use was too broad, notwithstanding the OIG's legitimate need to seek legal advice from the Department of Justice. Accordingly, the routine use has been tailored to the OIG's operations by specifying that disclosure to the Department of Justice to obtain its advice will be limited to any matter relevant to an OIG investigation, audit, inspection, or other inquiry.

Routine use (i): OMB took the position that the disclosure of information to a Member of Congress acting on behalf of a constituent should be based upon a written, not an oral, request from the constituent. This routine use was not changed substantively from that currently in place for this system of records, which was based on specific guidance from OMB published in 1975. However, OMB has changed its view about whether a written request from the constituent is necessary since it published the 1975 guidance. The Department has amended this routine use to reflect OMB's current position and OIG's own experience with constituent requests to representatives, which are invariably written.

Routine use (j): This routine use for computer matching disclosure has been deleted, as suggested by OMB, because it is unnecessary under the Computer Matching and Privacy Protection Act. The Act specifically excludes from the definition of "matching program" computer matches that are performed by an agency (or any component thereof) that performs as its principal function any activity pertaining to the enforcement of criminal laws if those matches are performed for the purpose of gathering evidence against any person who is the subject of a specific criminal or civil law enforcement investigation. 5 U.S.C. 552a(a)(8).

Dated: January 25, 1993.

James B. Thomas, Jr.,

Inspector General.

Accordingly, ED hereby amends the system of records known as the Investigative Files of the Inspector General ED/OIG (System Number 18–10–0001) as follows:

18–10–0001

PURPOSES:

1. The purposes paragraph is amended by redesignating purpose number (5) as purpose number (6) and adding a new purpose number (5) to read as follows:

* * * * *

(5) coordinating relationships with other Federal agencies, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG;

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

2. Routine use (a) is revised to read as follows:

* * * * *

(a) *Disclosure for use by other law enforcement agencies.* In the event that any records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of criminal or civil law or regulation, ED/OIG may disclose information from this system of records as a routine use to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

* * * * *

3. Routine use (c) is revised to read as follows:

* * * * *

(c) *Disclosure for use in employment, employee benefit, security clearance, and contracting decisions*—(1) *For Decisions by ED.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an ED decision concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

(2) *For decisions by other public agencies and professional licensing organizations.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency or other public authority or professional licensing organization, in connection with the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit.

ED/OIG may disclose to those agencies and professional licensing organizations the fact that this system of records contains information relevant to the hiring of an employee or issuance of a security clearance so that the agency or professional licensing organization may make a request for the information supported by the consent of the individual.

ED/OIG may make no disclosure under this paragraph ((c)(2)) unless the Inspector General or his or her designee determines that the information is sufficiently reliable to support a referral to another office within ED or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

* * * * *

5. Routine use (g) "Debarment and Suspension Disclosure" is removed, routine uses (h) and (i) are redesignated (g) and (h), respectively, and routine use (j) is removed.

6. Routine use (g), as redesignated in paragraph 5, is revised to read as follows:

* * * * *

(g) *Disclosure to the Department of Justice.* ED/OIG may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

* * * * *

7. Routine use (h), as redesignated in paragraph 5, is revised to read as follows:

* * * * *

(h) *Congressional Member Disclosure.* ED/OIG may disclose information from this system of records as a routine use from the record of an individual in response to an inquiry from the Member of Congress made at the written request of that individual; however, the Member's right to the information is no greater than the right of the individual who requested it.

[FR Doc. 93–2140 Filed 1–28–93; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Financial Assistance: The American Iron and Steel Institute

AGENCY: Idaho Field Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department, Idaho Field Office (DOE, ID), announces that pursuant to the DOE Financial Assistance Rules 10 CFR part 600.114(e) it intends to enter into a cooperative agreement with the American Iron and Steel Institute (AISI) and subrecipients for the Advanced Process Control Program for the Steel Industry.

FOR FURTHER INFORMATION CONTACT: Ginger Sandwina, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562, 208/526–8698.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is Public Law 93–577, Federal Non-Nuclear Energy Research and Development Act of 1974; to improve the efficiency of energy use in the industrial sector through research and development of high-risk, innovative technologies. In addition, the research is consistent with the purpose of the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988, Public Law 100–680 to establish an industrial energy conservation and competitive technology program to conduct scientific research and development of steel and aluminum technologies.

The anticipated project period is for five years for a total cost of $22.791M. The total project cost will be cost shared 30% by industry and 70% by DOE. DOE funds for the first 12 months is estimated to be $3.827M.

The overall program objective is to improve energy efficiency and productivity in the steel industry by developing sensors and controls to support the intelligent and efficient production of quality steel products. The program has been divided into six major research task activities with program management by AISI. Specific objectives are as follows:

Task A—Optical Sensors and Controls for Improved Basic Oxygen Furnace (BOF) Operations. Subrecipients: Sandia National Laboratory and Bethlehem Steel Homer Research Laboratory. The objective of this major research task is to develop optical sensors for the BOF used in commercial steelmaking. The activity is organized in three parallel subtasks. The first will provide the necessary research and development to produce optical sensors for the in-situ, real-time measurement of competition and temperature of the off-gas components from the BOF. The second will focus on the development of optical sensors for measurements of bath and hot spot temperatures from within existing oxygen lances. The third focuses on the use of this new on-line process information to develop an improved BOF control strategy.

Task B—Improved Liquid Steel Feeding System for Slab Casters. Subrecipient: Westinghouse Science and Technology Center. The objective of this task is to develop an electromagnetic valve-based flow control system to address the significant problems that are currently experienced in the steel feeding of slab casters. The subrecipient will design and construct an electromagnetic valve system, and will supervise test demonstrations; first on a billet caster scale, and later on a production slab caster.

Task C—Microstructure Engineering in Hot Strip Mills. Subrecipients: National Institute for Standards and Technology (NIST) and University of British Columbia.

The objective of this major task item is to develop a predictive tool which can be used to quantitatively link the process parameters in a hot strip mill to the properties of the hot-rolled steel products.

The predictive tool will be a user-friendly computer model which incorporates heat flow, knowledge of microstructural phenomena (recrystallization, grain growth, precipitation and austenite decomposition) and structure-composition property relationships, to compute the thermal and microstructural evolution of steel during hot rolling, as well as final product properties (at the downcoiler), as a function of hot strip mill design and operating practice. The project includes laboratory testing and analysis of steel, and the development of computer programs which can then be incorporated into the control of hot strip mills.

Task D—On-Line Non-Destructive Mechanical Properties Measurements Using Magnetic and Ultrasonic Techniques. Subrecipients: NIST and National Research Council Canada and Industrial Materials Institute. The objective of this task is the development of magnetic and acoustic measurements techniques and sensors which can then be used to non-destructively and continuously monitor the mechanical properties of moving steel sheet on-line without physical contact. The mechanical properties will be inferred from both magnetic and ultrasonic measurements. Initial evaluations will be conducted in the laboratory, and at the end of a four year project it is expected that a prototype instrument will have been built and tested on a production line.

Task E—Phase Measurement of Galvanneal Steel. Subrecipients: Data Measurement Corporation (DMC) and Jet Propulsion Laboratory (JPL). The objective of this task is the demonstration of an instrument using x-ray fluorescence techniques which will measure the phase distribution of galvanneal (a special coated steel product) rapidly and non-destructively. The technique will utilize an existing instrument manufactured by DMC that determines the percent iron in zinc coatings on steel.

Design modifications to the instrument will be based on the joint research and expertise of DMC and JPL. The result of the research is intended to lead to the development of an on-line phase distribution gauge for galvanneal steel.

Task F—Temperature Measurement of Galvanneal Steel. Subrecipients: Oak Ridge National Laboratory. The objective of this task is to research, develop, and demonstrate a prototype system for in-process measurement of galvanneal steel strip temperatures. The prototype instrument will be based on thermographic phosphor technology. The equipment will be developed in the laboratory, and at the conclusion of the

four year project period, will be demonstrated in an existing steel mill.

Task G—AISI Program Management: As recipient of the financial assistance award, AISI will provide overall program management functions.

Issued: January 13, 1993.

R. Jeffery Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 93–2179 Filed 1–28–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance: The Shoshone-Bannock Tribes

AGENCY: Idaho Field Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2) it plans to negotiate and award non-competitive grant DE–FG07–90ID13225 to The Shoshone-Bannock Tribes. The grant implements provisions in the "Working Agreement Between The Shoshone-Bannock Tribes of the Fort Hall Indian Reservation and the Idaho Field Office of the United States Department of Energy Concerning Environment, Safety, Health, Cultural Resources, and Economic Self-Sufficiency," signed September 29, 1992. The intended effect of the grant is to provide resources for The Shoshone-Bannock Tribes to assure themselves that activities, including operations and environmental restoration, performed at the Idaho National Engineering Laboratory (INEL) Site are performed in such a manner that the health, safety, environment, and cultural resources of The Tribes are protected and to assist The Tribes in maintaining economic self-sufficiency.

FOR FURTHER INFORMATION CONTACT: Linda A. Hallum, Contract Specialist, (208) 526–5545; U.S. Department of Energy, 785 DOE Place, MS 1221, Idaho Falls, ID 83401–1562.

SUPPLEMENTARY INFORMATION: DOE programs at the INEL Site cannot be conducted effectively without the support of the surrounding communities, including the Tribes resident at Fort Hall Indian Reservation. Programmatic and legal mandates to involve affected citizens in DOE planning and program performance monitoring require an aggressive outreach program, including transfer of funds through grants to certain affected parties, such as state and local governments and Indian tribes. Effective implementation of such a grant to The Tribes and establishment of the relationship described in the Working Agreement will promote the public good. The grant satisfies criteria at 10 CFR 600.7(b)(2)(i)(C) for justifying noncompetitive financial assistance. The applicant is a unit of government and the supported activity is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The grant award shall be for $300,000 per year for five years. DOE has authorized $300,000 for immediate initial funding, and has requested funding in out-year budget submittals. No cost-sharing is included in this grant. Statutory authority for this award is Public Law 95–41, DOE Organizational Act; Public Law 96–510, Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA); and Public Law 99–499, The Superfund Amendments and Reauthorization Act of 1986 (SARA).

Procurement Request Number: 07–93ID13225.000.

Dated: January 13, 1993.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 93–2178 Filed 1–28–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF93–39–000]

AES Northside, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 22, 1993.

On January 14, 1993, AES Northside, Inc. (Applicant), of 1001 N. 19th Street, Suite 2000, Arlington, Virginia 22209, submitted for filing an application for certification 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 topping-cycle cogeneration facility will be located in Maryland, and power output from the facility will be sold to Baltimore Gas & Electric Company under an executed contract. The facility will consist of circulating fluidized bed boiler(s) and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used in an existing manufacturing facility for process uses. The primary energy source will be coal. The maximum net electric power production capacity of the facility will be 300 MW. The installation of the facility is scheduled to begin in late 1994.

Any person desiring to be heard or objecting to the granting of qualifying status 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 must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the Applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–2114 Filed 1–28–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM93–4–000]

Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations; Technical Conference

January 22, 1993.

Take notice that a technical conference will be convened in this proceeding on Friday, February 26, 1993 at 9:30 a.m. The purposes of the conference are to determine the progress made to date by the natural gas industry in developing interactive, user-friendly electronic bulletin boards and to review concrete proposals by the natural gas industry.

The conference will be held in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested parties are invited to attend. Requests to make formal presentations or give technical demonstrations, including time, format and special equipment requirements, should be submitted to the Commission in writing by February 8. The format of the conference and presentation times will be announced after that date.

For additional information, or to indicate your intent to participate in the conference, interested persons can call

Marvin Rosenberg at (202) 208–1283 or Brooks Carter at (202) 208–0869.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–2111 Filed 1–28–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–02860T Wyoming-39]

Wyoming; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 22, 1993.

Take notice that on January 8, 1993, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Lance Formation underlying a portion of Sublette County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The notice covers approximately 207,000 acres and includes all sections within the following townships:

Township 27 North, Range 107 West
Township 27 North, Range 108 West
Township 28 North, Range 107 West
Township 28 North, Range 108 West
Township 29 North, Range 107 West
Township 29 North, Range 108 West
Township 29 North, Range 109 West
Township 30 North, Range 108 West
Township 30 North, Range 109 West

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Lance Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–2113 Filed 1–28–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–145–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

January 21, 1993.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP93–145–000]

Take notice that on January 6, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing Tennessee to: (1) Provide a firm transportation service for Selkirk Cogen Partners III, L.P. (Selkirk II), and (2) construct and operate certain facilities necessary to provide the service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes a firm transportation service of a maximum daily quantity of 55,000 dth for Selkirk II. The receipt point is at the interconnection of Tennessee and Iroquois Gas Transmission System at Wright, New York, and the delivery point is at the point of interconnection between Tennessee and Selkirk II at Selkirk, New York. Tennessee is proposing to charge Selkirk II the rates set forth in Tennessee's Rate Schedule NET-Northeast.

To provide this service, Tennessee proposes to construct a 1.12 mile loop of 36 inch diameter pipeline from M.P. 251+1.67 to M.P. 251+2.79 in Albany County, New York. Tennessee also proposes modification to the measurement facilities located at both the Wright and Selkirk meter stations. The total cost of the project is estimated to be $2,650,830.

Comment date: January 11, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Mid Louisiana Gas Company and Sea Robin Pipeline Company

[Docket No. CP93–148–000]

Take notice that on January 7, 1993, Mid Louisiana Gas Company (Mid Louisiana), 333 Clay Street, suite 2700, Houston, Texas 77002 and Sea Robin Pipeline Company (Sea Robin), 190 Fifth Avenue North, P.O. Box 2563, Birmingham, Alabama 35202–2563, also referred to as Applicants, filed a joint abbreviated application for authorization to abandon a transportation service provided by Sea Robin for Mid Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

The Applicants state that Sea Robin currently provides transportation service to Mid Louisiana pursuant to Sea Robin Rate Schedule X–14, which agreement was approved by the Commission in Docket No. CP76–428. The Applicants further state that Sea Robin originally was authorized to transport up to a total of 10,000 Mcf per day and that the quantity to be transported subsequently has been reduced to a current level of 6,700 Mcf per day pursuant to an order issued in Docket No. CP90–1403. The Applicants state that they have now mutually agreed to terminate the agreement and therefore request that the Commission grant abandonment of Rate Schedule X–14 as of January 1, 1993. Applicants state that as of that date, further transportation services by Sea Robin to Mid Louisiana would be provided pursuant to part 284 of the Commission's Regulations.

No abandonment of facilities would be proposed herein.

Comment date: February 11, 1993, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said 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 on 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2110 Filed 1–28–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–36–000]

Natural Gas Pipeline Company of America; Informal Settlement Conference

January 22, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, March 3, 1993, 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 in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214(1992).

For additional information, contact Joan Dreskin at (202) 208–0738 or John P. Roddy at (202) 208–1176.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–2112 Filed 1–28–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 90–110–NG]

Alcan Aluminum Corp.; Final Order Granting Long-Term Authorization to Export and Import Natural Gas to and from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Alcan Aluminum Corporation authorization to export to Canada at St. Clair, Michigan, up to 8 MMcf per day of domestic natural gas and to import from Canada at Grant Island, New York, up to 8 MMcf per day of natural gas, with adjustments for line losses, for a 15-year term commencing on the date the Empire State Pipeline System is placed in service.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 25, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–2184 Filed 1–28–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–160–NG]

Chevron Natural Gas Services, Inc.; Application to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import and export natural gas from and to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 21, 1992, as supplemented on January 5, 1993, of an application filed by Chevron Natural Gas Services, Inc. (CNGS), for blanket authorization to import up to 100 Bcf of natural gas and export up to 100 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of first delivery after March 31, 1993, the date CNGS' current blanket authorization expires. See DOE/FE Opinion and Order No. 314, issued May 9, 1989 (1 FE ¶70,223). CNGS intends to utilize existing pipeline facilities for the transportation of the volumes to be imported and exported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 1, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: CNGS, a Delaware corporation with its principal place of business in Houston, Texas, is a marketer of natural gas. CNGS intends to import and export natural gas from and to Mexico on a short-term and spot basis, either as an agent for its customers or for its own account. The specific terms of each import and export sale would be negotiated at market responsive prices. The gas to be imported would come from a variety of Mexican suppliers, including Petroleos Mexicanos, and the natural gas to be exported would be supplied by an affiliate of CNGS, Chevron U.S.A. Inc., as well as other producers and pipeline companies. CNGS requests authority to import and export this gas at any point on the U.S./Mexico border using existing pipeline facilities.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this arrangement would be competitive and there is no current need for the domestic gas that would be exported. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this

proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene, or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CNGS's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 22, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–2185 Filed 1–28–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–156–LNG]

Phillips Alaska Natural Gas Corporation and Marathon Oil Company; Application for Blanket Authorization to Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed jointly on December 9, 1992, by Phillips Alaska Natural Gas Corporation and Marathon Oil Company (Phillips/Marathon) requesting blanket authorization to export to various countries up to 10 trillion Btu's (approximately 10 Bcf) of liquefied natural gas (LNG) over a two-year term beginning on the date of first export. The proposed exports would take place at the existing Phillips/Marathon LNG facilities at Kenai, Alaska.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 1, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Phillips Alaska Natural Gas Corporation (PANGC), a Delaware corporation with its principal place of business in Bartlesville, Oklahoma, is a wholly-owned subsidiary of Phillips Petroleum Company, a Delaware corporation. Marathon Oil Company (Marathon), an Ohio corporation with its principal place of business in Houston, Texas, is a wholly-owned subsidiary of USX Corporation, also a Delaware corporation. PANGC and Marathon are not affiliated with each other. Phillips/Marathon plan to export LNG on their own behalf and as agents for others. Applicants indicate the LNG export transactions will be short-term in duration, with prices adjusted on a monthly basis as required by market conditions and as compared with available competing fuels.

The decision on Phillips/Marathon's application for export authority will be made consistent with DOE's gas export policy guidelines, under which DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties who may oppose this application should comment in their responses on these issues as they relate to the requested export authority.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to

this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Phillips/Marathon's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 21, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–2183 Filed 1–28–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–161–NG]

Aquila Southwest Marketing Corp.; Application for Blanket Authorization To Import and Export Natural Gas From and to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 21, 1992, of an application filed by Aquila Southwest Marketing Corporation (Aquila) requesting blanket authorization to import and export a cumulative maximum of 360 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of first import or export after March 1, 1993, the date that Aquila's current blanket authorization expires. See DOE FE Opinion and Order No. 473 issued January 31, 1991 (1 FE ¶ 70,406). The proposed imports and exports would take place at any point on the United States/Mexico border where existing pipeline facilities are located. Aquila would file with DOE quarterly reports detailing each import or export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 1, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056,. FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4587

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503

SUPPLEMENTARY INFORMATION: Aquila is a Delaware corporation with its principal place of business in San Antonio, Texas. Aquila is an indirect subsidiary of Aquila Energy Corporation which in turn is a wholly-owned subsidiary of Utilicorp United, Inc. The corporate name of Aquila was previously Clajon Marketing, L.P. The corporate name was changed to Aquila Southwest Marketing Corporation effective July 1, 1992. See DOE FE Opinion and Order No. 473–A, issued August 6, 1992 (1 FE ¶ 70,622). Aquila is the marketing affiliate of Aquila Southwest Pipeline Corporation.

Aquila requests authorization to import and export natural gas on its own behalf or as an agent on behalf of others. Aquila would use existing pipeline facilities for transportation of the imported and exported gas. Aquila does not yet know the identity of the actual suppliers, transporters, or purchasers but states that all shipments of imported gas would be based on the specific needs of its purchasers and therefore would reflect market conditions existing at the time of negotiation of the purchase agreement. The domestically produced gas to be exported would be incremental to the needs of current domestic purchasers in the regions from which the supplies would be drawn.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangement. Parties that may oppose the application should comment in their responses on these issues. Aquila asserts that its proposal is in the public interest. Parties opposing Aquila's application bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate

consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Aquila's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 26, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–2292 Filed 1–28–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4557–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 11, 1993 through January 15, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–AFS–J65196–UT Rating LO, Coyote Hollow Timber Sale, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary

EPA had no environmental objections to the draft environmental impact statement.

ERP No. D–AFS–L65183–AK Rating EC2, Central Prince of Wales Ketchikan Pulp Long-Term Timber Sale, Implementation, Tongass National Forest, Prince of Wales Island, AK.

Summary

EPA had environmental concerns regarding impacts on water quality and assuring that best management practices are implemented. Water quality monitoring is required to ensure compliance with water quality standards. Additional information is needed on the effectiveness of monitoring for the effects of timber harvest and road construction on water quality.

ERP No. D–BLM–J60009–UT Rating EC2, UT–88 south of Ouray to I–70 Connector, Construction and Operation, Right-of-Way Approval and Funding, Uintah and Grand Counties, UT.

Summary

EPA identified environmental concerns regarding preservation of water quality. Additionally, the DEIS does not contain sufficient information to fully assess environmental impacts that should be avoided and specific mitigation methods to minimize those impacts.

ERP No. D–BLM–K03006–CA Rating EC2, Cajon Crude Oil Pipeline Project, Construction, Operation and Transportation, from the Santa Barbara Channel and the San Joaquin Valley to the Los Angeles Basin, Granting of Right-of-Way Permit, San Bernardino and Los Angeles Counties, CA.

Summary

EPA expressed environmental concerns with potential impacts to water quality, riparian habitat and biodiversity. EPA asked for more information on earthquake-related spill risks and mitigation measures, efficiency of safety measures, contaminated soils testing, compliance with the 404(b)(1) Guidelines, conformity to the State Implementation Plan, cumulative impacts to public safety, and effects on other marketing alternatives, flood control and groundwater recharge facilities, and hazardous wastes on George Air Force Base. EPA asked that the FEIS analyze the feasibility of restricting the right-of-way to 25 feet for the entire length of the pipeline versus only the urban segment.

ERP No. D–COE–E36172–MS Rating EC2, Abiaca Creek Watershed Project, Demonstration Erosion Control Project, Implementation, Sediment and Flood Control Measures, Yazoo Basin, Mathews Brake National Wildlife Refuge, Carroll, Holmes and Leflore Counties, MS.

Summary

EPA had environmental concerns regarding the effectiveness and commitment to long-term efforts in the mitigation plan. EPA also noted that the proposed plan may pose short- and long-term sedimentation and turbidity problems.

ERP No. D–COE–K39035–HI Rating EC2, Ewa Beach Marina Project,

Construction and Development, Marina Protection, Department of Army Permit Application, U.S. CGD Bridge Permit, Ewa Beach, Island of Oahu, Honolulu County, HI.

Summary

EPA expressed concern with potential impacts to the caprock aquifer, marine resource and wetlands. The DEIS did not include detailed information on compliance with the 404(b)(1) Guidelines, ocean disposal regulations and water quality standards. Although studies concerning compliance with these requirements may have been conducted, they were not included in the DEIS. EPA recommended that the FEIS include a detailed description and analysis of compliance with applicable environmental laws and regulations with major, relevant reports and studies supplied in appendices.

ERP No. D–FHW–J40128–ND Rating LO, North Dakota 1806 Transportation Improvements, from the Heart River Bridge in Mandan to Fort Lincoln State Park, Funding and COE 404 Permit, Morton County, ND.

Summary

EPA had no environmental objections to the draft environmental impact statement.

ERP No. DS–IBR–J35005–00 Rating EO3, Animas-La Plata Project, Additional Information concerning Agricultural, Municipal and Industrial Water Supplies, Animas and La Plata Rivers, San Juan County, NM and La Plata and Montezuma Counties, CO.

Summary

EPA objected to the project because it was not consistent with State water quality standards and it failed to provide adequate mitigation for riparian and wetland habitat losses. EPA found the document to be inadequate due to its failure to fully analyze the impacts of the U.S. Fish and Wildlife Service's Reasonable and Prudent Alternative to avoid jeopardizing endangered species and its failure to thoroughly evaluate the impact of placement of fill material into waters of the U.S. Further, the Bureau inappropriately relied on future studies to complete environmental impact assessment.

Final EISs

ERP No. F–BLM–J70017–MT Judith-Valley-Phillips Comprehensive Resource Management Plan, Implementation, Lewistown District, Judith Basin, Fergus, Petroleum, Phillips and Valley Counties, MT.

Summary

EPA expressed environmental concerns regarding changes in the preferred alternative in the final EIS. Several of these changes pose potential environmental impacts, including impacts to the westslope cutthroat trout and to unique ecological areas.

Dated: January 26, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–2176 Filed 1–28–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4557–3]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Availability of Environmental Impact Statements Filed January 18, 1993 through January 22, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930017, DRAFT EIS, COE, OH, Cleveland Harbor Navigation Channels Maintenance, Confined Disposal Facility (Site 10B 15 Year) Construction and Use, Lake Erie, Cuyahoga River, Cuyahoga County, OH, Due: March 15, 1993, Contact: Tod Smith (716) 879–4173.

EIS No. 930018, FINAL EIS, AFS, UT, Kamas Valley Grazing Allotment Management Plan, Implementation, Wasatch-Cache National Forest, Kamas Ranger District, Summit County, UT, Due: March 01, 1993, Contact: Calvin Baker (801) 783–4338.

EIS No. 930019, FINAL EIS, EPA, TX, Formosa Industrial Facilities Continued Operation and Expansion, Waste Water Discharges, National Pollutant Discharge Elimination System Permit Issuance, Point Comfort, Jackson County, TX, Due: March 01, 1993, Contact: Norm Thomas (214) 655–2260.

EIS No. 930020, FINAL EIS, FHW, NC, Hickory East Side Thoroughfare Transportation Improvement, US 127 to I–40 east of Hickory and continuing to US 70 in the vicinity of Startown Road, Funding, Section 404 Permit, City of Hickory Catawba County, NC, Due: March 15, 1993, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 930021, DRAFT EIS, AFS, MT, Bob Marshall and Great Bear Wilderness Areas Noxious Weed Management Projects, Implementation, Flathead National Forest, Spotted Bear and Hungry Horse Ranger Districts, Flathead, Powell, Missoula and Lewis and Clark Counties, MT, Due: March 15, 1993, Contact: Greg Warren (406) 387–5243.

Amended Notices

EIS No. 920434, DRAFT EIS, AFS, OR, 1991 Warner Creek Fire Recovery Project, Northern Spotted Owl Habitat and Other Resources Reforestation, Northern Spotted Owl Habitat Conservation Area 0–10, Willamette National Forest, Oakridge Ranger District, Lane County, OR, Due: February 12, 1993, Contact: Terri Jones (503) 782–2291. Published FR 11–13–92—Review period extended.

EIS No. 920463, REVISED DRAFT EIS, DOE, MO, Weldon Spring Site, Remedial Action/Feasibility Study for Chemical Plant, Funding, National Priorities List, St. Charles County, MO, Due: February 19, 1993, Contact: Stephen McCracken (314) 441–8086. Published FR -11–27–92—Review period extended.

Dated: January 26, 1993.

William D. Dickerson,

Deputy Director Office of Federal Activities.

[FR Doc. 93–2175 Filed 1–28–93; 8:45 am]

BILLING CODE 6560–01–U

[FRL–4557–7]

Science Advisory Board; Public Meetings and Conference Call

Under Public Law 92–463, notice is hereby given of the following Science Advisory Board (SAB) Committee Meetings. All meetings listed below are open to the public; however, seating is often limited and is on a first come basis.

1. *The Radon Engineering Cost Subcommittee of the Drinking Water Committee (DWC)* will meet on February 8, 1993 to review a Congressionally required radon reduction cost study prepared by EPA. This meeting will be held from 9 am to 6 pm at the U.S. Environmental Protection Agency Headquarters, Conference Room 3N, North Conference Center, Mall Level, 401 M Street, SW, Washington, DC 20460. The proposed charge to this Subcommittee is: (a) To determine whether EPA offices are employing a reasonable approach for estimating the cost-effectiveness of mitigating airborne indoor radon in residences; and (b) to assess whether the technologies which have been judged by EPA as being Best Available Technology (BAT) for each size category, and whether the cost estimates of design, operation and maintenance of these technologies are accurately estimated. Copies of the documents presented to the Committee as background and for review are available from Ms. Nena Shaw, U.S. EPA, Office of Groundwater and Drinking Water, Division of

Drinking Water Standards, 401 M Street SW, Mail Code WH 550D, Washington, DC 20640, Phone: (202) 260–5555. If necessary, this Subcommittee will conduct an open report writing/drafting session on February 9th in Room 5N (see address above) beginning at 8:30 am, adjourning no later than 3 p.m.

2. *The Drinking Water Committee (DWC)* will meet February 9–10, 1993 (from 9 a.m. to 5:30 p.m. on February 9th and 8:30 a.m. to 4:30 p.m. on February 10th) at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia. The purpose of the meeting is to: (a) Be briefed on the Radon Engineering Cost Subcommittee's review of the radon cost studies; (b) review the *Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health*, including discussion of criteria for cancer and non-cancer effects, exposure, bioaccumulation, minimum data, and microbiological risks; (c) review the draft *Requirements for Nationwide Approval of New and Optionally Revised Methods for Inorganic and Organic Parameters in National Primary Drinking Water Regulations Monitoring (also known as the "Chemistry Testing Protocol")*; and (d) to receive briefings on the Agency's recent risk characterization initiative, the draft *Working Paper for Considering Draft Revisions to the U.S. EPA Guidelines for Cancer Risk* (EPA/600/AP–92/003), and on recent research findings concerning arsenic carcinogenicity. To obtain copies of the documents pertaining to (b) and (d) above (except the Draft Revisions to the U.S. EPA Guidelines for Cancer Risk) contact Ms. Lynn Feldpausch, U.S. EPA, Office of Science and Technology, Health and Ecological Criteria Division, 401 M Street SW, Mail Code WH–586, Washington, DC 20460, Phone: (202) 260–8149. To obtain the Draft Revisions to the U.S. EPA Guidelines for Cancer Risk, contact the Center for Environmental Research Information (CERI), U.S. EPA, 26 Martin Luther King Drive, Cincinnati, OH 45268, Phone: (513) 569–7562 or Fax: (513) 569–7566. To obtain copies of the "Chemistry Testing Protocol," contact Mrs. Frances Dolby, U.S. EPA, SAB Staff Office, Mail Code A101F, 401 M Street, SW, Washington, DC 20460, Phone: (202) 260–6552 or FAX: (202) 260–7118.

3. *The Radiation Advisory Committee (RAC)* will conduct a conference call meeting February 10, 1993 from 3:30–5:30 p.m. Eastern Standard Time (EST) for preliminary consideration of portions of a Congressionally required multi-media risk assessment study addressing the "risk of adverse human health effects associated with exposure to various pathways of radon" (as required under the Safe Drinking Water Act Implementation, published in the Congressional Record September 25, 1992). For copies of relevant review materials, please contact Ms. Nena Shaw, U.S. EPA, Office of Groundwater and Drinking Water, Division of Drinking Water Standards, 401 M Street SW, Mail Code WH 550D, Washington, DC 20460, Phone: (202) 260–5555. The number of conference lines available is limited, therefore, persons wishing to participate should telephone Mrs. Kathleen Conway, SAB Staff Office, no later than 12 noon (EST) Monday February 8 at (202) 260–6552. The study will be reviewed at the RAC's February 17–19, 1993 meeting in Arlington, Virginia (see item 5. below).

4. *The RAC's Radon Science Subcommittee* will meet February 16–17 (from 9 a.m. Tuesday, February 16th until noon Wednesday, February 17th) at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia. The Committee will receive briefings on radon research and plan its review of research needs for the areas of radon measurement, exposure estimation, interpretation of data, uncertainty, and communications. No Committee review materials are available for this meeting. The proposed charge for this review is: (a) What are the remaining important areas of scientific uncertainty that affect (1) the estimates of exposure and risk associated with radon, and (2) risk reduction strategies (such as mitigation)?; (b) broadly, what scientific efforts are currently underway, both within the Agency and outside, that would address these areas?; and (c) what are the near- and longer-term research needs for the Agency's own programs, and what are the priorities for these efforts?

5. *The Radiation Advisory Committee* will meet February 17–19, 1993 (from 1 p.m. Wednesday, February 17th until 5 p.m. on Friday, February 19th) at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia. The Committee will review a Congressionally required multi-media risk assessment study of radon prepared by EPA (see item 3. above). The proposed charge for this review is to determine the adequacy of revisions of inhalation risk from radon progeny and the adequacy of uncertainty analysis regarding risk assessment of water-borne radon, including health risk analysis and exposure analysis. The Committee will also hear briefings on the plans of the RAC's Radon Science Subcommittee (see item 4. above) and on various Agency activities, discuss a commentary on quantitative uncertainty analysis, discuss issues relating to naturally occurring radioactive materials and residual radioactivity and consider the Committee's FY93 activities. The SAB Consultation on aqueous pathway modeling, which was discussed at the October 1992 RAC meeting has been assigned to the SAB's Environmental Engineering Committee (EEC). A separate **Federal Register** notice will describe that EEC meeting which is currently scheduled for March 3–4, 1993.

FOR FURTHER INFORMATION: Copies of the documents given to the Science Advisory Board for review are provided by the Agency to the public; they are not available from the Science Advisory Board staff. The contact persons for these documents are noted above. For additional administrative information concerning these meetings, including draft agendas, please contact Mrs. Dorothy Clark, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone: (202) 260–6552; Fax: (202) 260–7118. For additional technical or procedural information concerning these meetings, please contact the appropriate Science Advisory Board Scientific/Engineering Staff member (Designated Federal Officials): Dr. K. Jack Kooyoomjian for Meeting 1; Mr. Manuel Gomez for Meeting 2; and Mrs. Kathleen Conway for Meetings 3, 4, and 5.

Anyone wishing to provide written public comments for any of the above announced meetings should forward at least thirty-five copies to Mrs. Clark no later than ten days before the meeting. Copies of these statements received in the SAB Staff Office ten days prior to a meeting will be mailed to the Committee before that meeting; copies received after that date will be provided to the Committee at the meeting. On the conference call, opportunities for oral comment will generally be limited to no more than five minutes per speaker and no more than fifteen minutes per conference call. A fixed number of conference lines have been reserved for the meeting. For the conventional meetings, opportunities for oral comment will generally be limited to no more than ten minutes per speaker and no more than thirty minutes per day. Commenters should register with Mrs. Clark at least ten days before the meeting, being sure to specify at which meeting they wish to provide comments.

Dated: January 13, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–2166 Filed 1–28–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jacksonville Port Authority

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200576–005

Title: Jacksonville/Blue Star Terminal Agreement

Parties:

Jacksonville Port Authority;
Blue Star (PACE) Ltd.

Synopsis: The amendment substitutes Blue Star (North America) Limited as a party to the Agreement in lieu of Blue Star (PACE) Ltd.

Dated: January 25, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–2129 Filed 1–28–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Regency Maritime Corp., Jo-Dim Investment Trust S.A. and North River Overseas S.A., 260 Madison Ave., New York, NY 10016–2401.

Vessel: Regent Rainbow.

Dated: January 25, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2142 Filed 1–28–93; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Record of Decision; Expansion of the United States Border Station; Del Rio, TX—January 13, 1993

The General Services Administration (GSA) announces its decision to purchase land northeast of the existing Border Station in Del Rio, TX to use for expansion of the Border Station.

The 60 acre tract is located in two separate sections. A 52 acre section is directly across Rio Grande Street to the northeast; the other 8 acres is across U.S. Spur 277 to the northwest of Rio Grande Street.

The existing Border Station, including commercial import inspection lot and dock facilities, is located northeast of the Rio Grande, three-quarters of a mile inland on high ground above the river floodplain, at the terminus of the Del Rio-Ciudad Acuna International Bridge. At present, the Border Station houses the U.S. Customs Service, the Immigration and Naturalization Service (INS), and the Department of Agriculture Animal and Plant Health Inspection Service (USDA–APHIS) for the purpose of routine checks and inspections of private and commercial vehicles and pedestrians entering the United States from Mexico.

Renovations were made to the existing Border Station in 1990 to support traffic flow increases brought by a growing area population, more trade, a new four-lane bridge leading to the station and improved capabilities of the Mexican Customs Services. These renovations, called Phase I in the EIS, included a truck ramp to the present import dock and expansion of the non-commercial inspection facilities. These improvements are considered an interim solution to the expansion needs at Del Rio.

The proposed project will be completed in two separate phases, known as Phase II and Phase III. Phase II will involve construction of a 25-space import dock, import lot, and import office across Rio Grande Street to the northeast. In addition, a hazardous material containment area, bulk cargo compound, a narcotics storage building, and an export lot will be constructed. The export lot will be built north of Rio Grande Street and across the street from the new Border Station. The existing primary commercial inspection booths will continue to be used. A buffer zone will be constructed to shield residential areas from noise, light and other annoying factors. This buffer zone will consist of either a grassed berm, a brick or concrete wall, or other appropriate sound barrier. After the year 2000, planning and design for Phase III facilities will begin. Phase III will include a new 25-space dock module addition to the initial 25-space dock, providing a total of 50 available dock spaces. Phase III would also include a new administration building, employee and visitor parking, headhouse, primary and secondary vehicle inspection, commercial primary inspection booth, an impound lot, empty truck inspection lot, and dog kennels.

GSA's decision to take this action is in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), and GSA Order PBS P 1095.4B, GSA.

Alternatives Considered

The Environmental Impact Statement (EIS) evaluated potential environmental impacts which would result from the proposed project. These include, but are not limited to, short-term impacts during construction as well as long-term changes in traffic, socio-economic concerns and physical conditions in the area.

The alternatives considered include the following:

No Action Alternative

The EIS considered a No Action Alternative, i.e., no change in the current facility. This alternative was rejected since the import lot is operating at full capacity at present and more traffic is projected to cross at Del Rio throughout the planning period.

Action Alternative No. 1

This alternative would divert traffic to other border crossings away from Del Rio. There are numerous other border crossings along the United States/Mexico border. Unfortunately, the highway system in Mexico is not always good and there are not easily accessible routes from Ciudad Acuna to these other crossing points. The system of using roadblocks, closing or restricting traffic on the existing Del Rio bridge, or other similar physical or economic deterrents

causing trucks to travel to other crossing points would not be feasible or practical. As part of this alternative, the crossing at Amistad Dam, located near Del Rio, was considered. However, the crossing is a narrow, two-lane road, not suitable for import lot inspections and unable to withstand heavy truck traffic without damage to the dam.

Action Alternative No. 2

This alternative would expand the border station to the southwest into the floodplain. This would involve the purchase and fill of approximately 61 acres of land located entirely within the floodplain of the Rio Grande. However, during agency review of the preliminary drawings for the expansion, the International Boundary and Water Commission (IBWC) stated emphatically that construction in the floodplain of the Rio Grande would not be allowed under any circumstance. Additionally, Federal regulations (Executive Order No. 11988) prohibit the construction of U.S. Government projects in the floodplain if other viable alternatives are available.

Action Alternative No. 3

This alternative involves developing land along Rio Grande Street northeast of the Border Station. This would require closing Rio Grande Street, taking 11 homes, and cause patrons of the Faith Mission to walk an extra .6 miles to reach the mission. In addition, since many of the pedestrians are sick and elderly, this is not a favorable alternative and would not be popular locally.

Action Alternative No. 4

This alternative includes purchase of 52 acres of mostly agricultural land directly across Rio Grande Street to the northeast and 8 Acres across Spur 277 to the Northwest from the existing Border Station. This alternative would initially involve purchase and relocation of three homes (only two currently occupied) and two commercial buildings. The remainder of the site consists of agricultural land. The expansion would be accomplished through phased construction as mentioned earlier. There are no wetlands on the site and it is outside the 100-year floodplain. There are no known threatened or endangered species, and no known historic or archaeological resources on the site. No significant impact on air quality or noise is expected.

Utility services will be provided by the city of Del Rio, with the exception of wastewater, which will remain on a septic tank system during Phase II construction and operation. Any adverse impacts, such as noise or lights, to the neighboring areas will be mitigated by construction of a barrier, discussed in the migation section that follows.

Preferred Alternative

The alternative described under No. 4 above was identified as both the "environmentally preferred alternative" and GSA's preferred alternative. The site was identified as the preferred alternative in the Draft EIS issued to the public in May, 1992. The Final EIS was issued for public comment on November 27, 1992.

Environmental Mitigation

All practicable means to avoid or minimize impacts to the area are being considered in the development of the project.

A 250-foot buffer zone (berm, wall, or other appropriate noise barrier) will be constructed on the east side of the border station expansion area to eliminate adverse noise impacts to residential areas. Any impacts on cultural resources would be primarily associated with construction at the site. In the event that cultural resources are uncovered during construction, work will stop and GSA will be contacted. Two commercial buildings and three homes will be relocated as part of this project.

Much consideration was given to the Faith Mission on how to minimize problems of access by the patrons to the Mission.

During a comment period of the EIS, GSA received continued support for the expansion project and no indication that other projects, such as bridges or development projects in the area, would interfere with or obviate the need for the proposed expansion. GSA received one comment from a land owner concerned about how his property would be affected by the expansion. GSA Will work with all land owners to accommodate their future housing needs.

GSA believes that there are no outstanding environmental issues to be resolved with respect to the Border Station expansion in Del Rio, Texas. Questions regarding the EIS prepared for this action may be directed to Shelly Rives, Region 7 Planning Staff (7PL), General Services Administration, 819 Taylor Street, Fort Worth, TX, 76132, (817) 334–4234.

Dated: January 20, 1993.

Approved:

Hollis V. Rutledge,

Regional Administrator (7A), GSA, Region 7, Forth Worth, TX.

[FR Doc. 93–2150 Filed 1–28–93; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

AGENCY: Administration for Children and Families, DHHS.

SUMMARY: Part K, Chapter K (Administration for Children and Families) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (56 FR 42332) is amended to reflect the changes in Chapter KA, the Office of the Assistant Secretary for Children and Families and Chapter KL, the Office of Management. Specifically, to transfer the ACF strategic planning function from KL, Office of Management to KA, Office of the Assistant Secretary.

The changes are as follows: 1. Amend KA.10 Organization to delete it in its entirety and replace it with the following:

KA.10 Organization. The Office of the Assistant Secretary for Children and Families is headed by the Assistant Secretary who reports directly to the Secretary and consists of:

The Office of the Assistant Secretary (KA)
Executive Secretariat Office (KAB)
Regional Operations Staff (KAC)
President's Committee on Mental Retardation Staff (KAD)
Advisory Board on Child Abuse and Neglect Staff (KAE)
Planning Staff (KAF)

2. Amend Chapter KA.20 Functions to delete paragraph A in its entirety and replace it with the following:

KA.20 Functions. A. The Office of the Assistant Secretary is responsible to the Secretary for carrying out ACF's mission and provides general supervision to the major components of ACF.

These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to assure their effectiveness, approving instructions, policies, publications, and grant awards issued by ACF, and representing ACF in relationships with governmental and non-governmental organizations. The

Assistant Secretary for Children and Families also serves as the Director of the Office of Child Support Enforcement but will sign official Child Support Enforcement documents as Assistant Secretary for Children and Families. The Principal Deputy Assistant Secretary serves as alter ego to the Assistant Secretary on program matters and acts in the absence of the Assistant Secretary.

The Deputy Assistant Secretary for Program Operations serves as principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of management and regional operations, and on ongoing program policy matters. The Deputy for Program Operations serves as liaison to the General Counsel and, as appropriate, initiates action in securing resolution of legal matters relating to ACF management and program issues. The Deputy for Program Operations advises the Assistant Secretary for Children and Families on ongoing program policy matters to ensure program compliance and adherence to program statutes; provides oversight and guidance to ACF program and staff offices on strategic planning efforts and the development of short and long range planning initiatives within ACF; and represents the Assistant Secretary for Children and Families on all programmatic and administrative litigation matters. The Deputy for Program Operations provides executive leadership and direction for the Office of Management, Regional Operations Staff, Planning Staff, and provides day-to-day direction to the regional offices on behalf of the Assistant Secretary for Children and Families.

3. Amend Chapter KA.20 Functions to add paragraph F as follows:

KAF. The Planning Staff provides oversight and guidance to ACF program and staff offices on strategic planning efforts. It is responsible for the development of short and long range planning initiatives with ACF, including planning and implementation related to the Secretary's Program Directions. It makes recommendations to and advises the Assistant Secretary for Children and Families on all planning matters including strategic planning; manages agency-wide planning systems for determining goals; develops planning guidance for the Assistant Secretary for Children and Families and provides guidance and technical assistance to ACF components in developing operational plans; develops and implements systems to assess progress in implementing plans; and serves as the focal point for leadership and the coordinating of cross-component, intra- and inter-departmental initiatives which involve ACF programs.

4. Amend KL.00 Mission to delete it in its entirety and replace it with the following:

KL.00 Mission. The Office of Management (OM) advises the Assistant Secretary for Children and Families in the broad areas of human resource management, organizational analysis, facilities and telecommunications management, and acquisition management. OM provides leadership and direction to ACF in such administrative and management activities as personnel, staff development, labor relations, support services, management analysis, internal controls, and organizational studies. It directs and coordinates services and support to meet ACF's space management, facilities services and voice telecommunications needs, and it provides centralized acquisition management services to ACF.

5. Amend KL.10 Organization to delete it in its entirety and replace it with the following:

KL.10 Organization. The Office of Management is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations and is organized as follows:

Office of the Director (KLA)
Division of Human Resources (KLB)
Division of Management Analysis (KLD)
Division of Administrative Services (KLE)
Division of Acquisition Management (KLF)

6. Amend KL.20 Functions, paragraph C. to delete it in its entirety.

Effective Date: January 15, 1993.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

[FR Doc. 93-2128 Filed 1-28-93; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, January 15, 1993.

(Call PHS Reports Clearance Officer on 202-690-7100 for copies of requests)

1. Health Education Assistance Loan (HEAL) Program—Loan Application Form—0915-0038—The application is needed for students to apply for HEAL loans. Schools use the application to determine a student's eligibility and maximum approvable amount of each loan. Lenders use the application to determine student eligibility and the amount of the installment or disbursement to be given the borrower. Respondents: Individuals or households, Businesses or other for-profits, and Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (minutes)
Reporting: Applicant	29,000	1	32
Reporting: Applicant school lender	286	104	32
Lenders	22	1,318	35

Estimated total annual burden....47,851 hours

2. The Feasibility Study for the Household Component of the National Medical Expenditure Survey (NMES): Patient Verification Survey—New—The Patient Verification Survey Component of the Feasibility Study will assess the quality of patient supplied data on medical care with provider supplied data. *Respondents*: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. *Number of Respondents:* 780; *Number of Responses per Respondent*: 1; *Average Burden Per Response:* .40 hours; *Estimated Annual Burden;* 310 hours.

3. Resources and Services Database of the CDC National AIDS Clearinghouse—0920-0255—The CDC National AIDS Clearinghouse (NAC) is a crucial member of the network of public and private organizations providing AIDS/HIV educational services. This data collection enables NAC to build and maintain a current, complete literary and service resource for AIDS/HIV. The data are also used as the main information source for the National AIDS hotline.

Respondents: State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; Small businesses or organizations. *Number of Respondents:* 11,917; *Number of Responses per Respondent:* 1.107; *Average Burden Per Response:* 0.317 hours; *Estimated Annual Burden:* 4,185 hours.

4. Symptom and Disease Prevalence Questionnaire and Supplemental Modules—New—Symptom and disease prevalence and biomarker surveys will

be conducted on private citizens living near hazardous waste sites who may have been exposed to hazardous substances and on private citizens living in comparison communities. The studies consist of a core questionnaire and supplemental organ modules to assess the adverse effect on kidney, liver, neurobehavioral and respiratory systems. *Respondents:* Individuals or households. *Number of Respondents:* 13,500; *Number of Responses per Respondent:* 1; *Average Burden Per Response:* .415 hours; *Estimated Annual Burden:* 5,604 hours.

5. Methadone Treatment Quality Assurance System Feasibility Study—Previously 0930–0154—The project examines the feasibility of a performance reporting system for Methadone treatment programs. Relative performance on objective, verifiable outcomes will be assessed considering client case-mix. Information from performance reports to programs will assist in improving the quality of treatment they provide. This submission is for the Field Test only to develop instruments and procedures. *Respondents:* Individuals or households, businesses or other for profit, Federal agencies or employees, non-profit institutions, small businesses or organizations. *Number of Respondents:* 2,612; *Number of Responses per Respondent:* 2.0789; *Average Burden Per Response:* .64664 hours; *Estimated Annual Burden:* 3,511 hours.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: January 26, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–2201 Filed 1–28–93; 8:45 am]

BILLING CODE 4160–17–M

Ad Hoc Subcommittee on Access to Services, National Vaccine Advisory Committee, Public Hearing

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Office of the Assistant Secretary for Health is announcing the forthcoming Hearing on Vaccine Supply to be held by the Subcommittee on Access to Services, National Vaccine Advisory Committee.

DATE: Date, Time and Place: February 24, 1993, at 9 a.m. to 4 p.m., Lister Hill Auditorium, National Library of Medicine, National Institutes of Health, Building 38A, 8600 Rockville Pike, Bethesda, MD 20894. The entire Hearing is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D., M.P.H., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, 5600 Fishers Lane, Parklawn Building, Room 13A–56, Rockville, Maryland 20857, (301) 443–0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Subcommittee

Those desiring to make presentations should notify the contact person before February 19, 1993, and submit a brief statement of the information they wish to present to the Subcommittee. Requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the Hearing who does not request an opportunity to speak in advance of the Hearing will be allowed to make an oral presentation at the conclusion of the Hearing, if time permits, at the chairperson's discretion.

Open Subcommittee Discussion: The Subcommittee will receive testimony and other information from vaccine and other health care experts on the economic and commercial underpinnings associated with alternatives for the supply and delivery of vaccines. This information will be used to form the basis for vaccine policy studies of alternative models to ensure achievement of the immunization coverage goals described in the "Healthy People 2000" report (i.e., 90 percent coverage for 2-year olds). Testimony will be presented on the administrative, policy and programmatic effects of alternative vaccine supply and delivery models on public programs and institutions, including state and local health departments, Medicaid, the Centers for Disease Control Immunization program, etc.

Specifically, the Subcommittee is interested in receiving testimony and other relevant information in the following areas:

- alternative vaccine supply models that are most feasible for the public and private sectors in the United States;
- the impact on the supply, cost, price, distribution, and delivery of vaccines associated with alternative vaccine supply models;
- the impact of these alternative models on the participants in the different components of the vaccine market;
- the ability of each alternative to achieve established public health immunization goals;
- the incentives and disincentives for U.S. market entry/production of vaccine;
- the potential impact of scientific advances that would affect maintaining an adequate supply of vaccines (i.e., improvements in the cold chain, more stable antigens, additional vaccine combinations, etc.); and
- suggested Federal policy recommendations for assuring an adequate supply, distribution, and delivery of vaccines.

The Hearing will be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the Hearing.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Subcommittee members and the charter of the National Vaccine Advisory Committee will be available at the Hearing. Those unable to attend the Hearing may request this information from the contact person.

Dated: January 19, 1993.

Kenneth J. Bart,

Executive Secretary, NVAC.

[FR Doc. 93–2161 Filed 1–28–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3562]

Submission of Proposed Information Collection to OMB Forms Required for the Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments must be received by February 12, 1993.

ADDRESSES: Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; or Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 Seventh Street SW., room 4178, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of HUD, 451 Seventh Street SW., room 4178, Washington, DC 20410, Telephone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of HUD has submitted to OMB, for expedited processing, an information collection package with respect to the forms and other information required for the Comprehensive Improvement Assistance Program (CIAP). The CIAP is authorized by section 14 of the U.S. Housing Act of 1937, as amended by section 119 of the Housing and Community Development (HCD) Act of 1987 and section 509 of the Cranston-Gonzales National Affordable Housing Act (NAHA). It also is requested that OMB complete its review within fourteen days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

(1) *Title of the information collection proposal:* Forms Required for the Comprehensive Improvement Assistance Program

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Public and Indian Housing

(3) *Description of the need for the information and its proposed use:* The data that will be collected on the forms are necessary for HUD to determine that a Public Housing Agency/Indian Housing Authority (herein referred to as HA) has complied with applicable statutory and regulatory requirements relative to applying for and implementing the CIAP. HUD will use the information to process an HA's CIAP Application, make funding decisions, and monitor approved programs.

(4) *Agency form numbers:* Form HUD–52820; Form HUD–52822; Form HUD–52825; Form HUD–53001; Form HUD–50070; Form HUD–50071; SF–LLL; and other narrative documentation.

(5) *Members of the public who will be affected by the proposal:* HAs and residents.

(6) *How frequently information submissions will be required:* Varies.

(7) *An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response:* See attached chart with a total of 22,298 burden hours.

(8) *Type of request:* Revised.

(9) *The names and telephone numbers of an agency official familiar with the proposal:* Janice D. Rattley, Office of Public and Indian Housing, (202) 708–1800

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 7, 1993.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM (CIAP) PAPERWORK BURDEN HOURS

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Local official and resident/homebuyer consultation requirements.	968.220/905.624	900	1	900	4.0	3600
Form HUD–52822, CIAP application	968.215(c)/905.618(c)	900	1	900	4.0	3600
Form HUD–50071, certification for contracts, grants, loans and cooperative agreements.	968.215(c)/905.618(c)	900	1	900	0.25	225
SF–LLL, disclosure of lobbying activities	968.215(c)/905.618(c)	50	1	50	0.25	13
Form HUD–52825, CIAP budget*	968.215(j)/905.618(j)	600	1	600	8.0	4800
Form HUD–52820, HA board resolution approving CIAP Budget.	968.215(j)/905.618(j)	600	1	600	0.5	300
Form HUD 50070, certification for a drug-free workplace.	968.215(j)/905.618(j)	600	1	600	0.25	150
List of participating turnkey III homeownership units/costs.	968.215(j)/905.618(j)	20	1	20	0.5	10
Form HUD–52825, CIAP progress report*	968.250/905.651	600	2	1200	4.0	4800
Contracting documents/budget revisions	968.235 and 968.245/905.642 and 905.648.	600	6	3600	1.0	3600
Form HUD–53001, actual modernization cost certificate.	968.260/905.657	600	1	600	2.0	1200
Total annual paperwork burden hours						22,298

*Form HUD 52825 is a combined Budget/Progress Report.

Existing burden hours for the CIAP are:

OMB No. 2257–0044, application requirements	40,190
OMB No. 2257–0047, survey instrument (physical needs assessment)	3,600
OMB No. 2257–0048, local official and resident/homebuyer consultation	18,240
OMB No. 2257–0065, project implementation schedule	900
OMB No. 2257–0049, reporting	5,250
Total Existing Burden Hours	68,180

Supporting Statement for Comprehensive Improvement Assistance Program (CIAP)

A. Justification

1. Under section 14 of the U.S. Housing Act of 1937, as amended (Act), Public Housing Agencies and Indian Housing Authorities (herein referred to as HAs) that own or operate fewer than 250 units are eligible to apply and compete for CIAP funds.

(Note: HAs with 250 or more units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP)).

The CIAP has been streamlined to make it easier for smaller HAs to participate in the program and to give smaller HAs the same flexibility as CGP agencies. The CIAP Application has been simplified, the processing groups have been reduced from six to two (Group 1 and Group 2), and the modernization types have been reduced from 11 to two (Emergency and Other). The interim rule establishes a four-step process for obtaining approval of a modernization program, as follows: (1) CIAP Application submission by HA; (2) completeness and eligibility review by HUD; (3) technical processing by HUD, including rating and ranking of the HA Applications; and (4) Joint Review by HUD. After Joint Review, HUD makes funding decisions and requests funded HAs to submit the CIAP Budget and other documents.

In order to reduce paperwork and limit the application package to statutorily required items, HUD plans to eliminate the following requirements previously approved under OMB No. 2577–0044: (1) Form HUD–52824, Five-Year Funding Request Plan; (2) Modernization Organization and Staffing Plan; (3) HA Report on Local Compliance with Cooperation Agreement; (4) Report on Project Implementation Schedule; (5) Narrative Statement Addressing Technical Review Factors; and (6) Lead Toxicity Risk Assessment form (which was used by HUD to determine funding priority for lead-based paint testing and is not the professional risk assessment referred to in Section 14(a)(5) of the Act). In addition, Form HUD–52827, Physical Needs Assessment (OMB No. 2577–0047) has been eliminated. The Replacement Reserve Estimate (OMB No. 2577–0044) and evidence of resident, homebuyer and local official consultation (OMB No. 2577–0048) have been incorporated into Form HUD–52822, CIAP Application. The Project Implementation Schedule (OMB No. 2577–0065) has been incorporated into Form HUD–52825, CIAP Budget/Progress Report.

Form HUD–52820, HA Board Resolution Approving CIAP Budget, Form HUD–50070, Certification for a Drug-Free Workplace, and additional information on modernization of Turnkey III homeownership units will be due after funding selection at the time of CIAP Budget submission. Deferral of the preparation of the CIAP Budget until Joint Review will reduce unnecessary paperwork for smaller HAs. The Department recognizes the limited staffing of smaller HAs and wants to ensure that all smaller HAs may apply for CIAP funds using existing staff resources.

2. In summary, the information collection requirements for the revised CIAP are as follows:

Before Funding Selection

Local Official and Resident/Homebuyer Consultation Requirements
HUD–52822, CIAP Application
HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements
SF–LLL, Disclosure of Lobbying Activities

After Funding Selection

HUD–52825, CIAP Budget/Progress Report
Form HUD–52870, HA Board Resolution Approving CIAP Budget
Form HUD–50070, Certification for a Drug-Free Workplace
List of Participating Turnkey III Homeownership Units/Costs

Implementation

HUD–52825, CIAP Budget/Progress Report
Contracting Documents/Budget Revisions
Form HUD–53001, Actual Modernization Cost Certificate

Before Funding Selection

Local Official and Resident/Homebuyer Consultation Requirements. Section 14(d) of the Act requires that HAs develop the application in consultation with appropriate local officials and with residents of the housing developments for which assistance is requested. To assure compliance with the statute, HUD requires evidence of consultation through HA certification on the CIAP Application and documentation during Joint Review.

Evidence of Resident Consultation. During Joint Review, the HA is required to provide HUD with its written evaluation of resident recommendations. HUD determines whether the HA has afforded residents a reasonable opportunity to present their views and has given full and serious consideration to their recommendations. Resident/homebuyer support is a technical review factor in HUD's rating of HA applications.

Evidence of Homebuyer Consultation. During Joint Review, the HA is required to provide the HUD Field Office with similar evidence of homebuyer consultation, where the proposed modernization involves a project under the Turnkey III Homeownership Opportunities Program or the Mutual Help Homeownership Opportunities Program. For consultation purposes under homeownership modernization, homebuyers are considered "tenants" within the meaning of the statute. Except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits, undertaking of cost-effective energy conservation, and lead-based paint testing and abatement, modernization of Turnkey III units results in an increase in the purchase price and the amortization period for each participating homebuyer family. Therefore, before the modernization is approved, each homebuyer family that decides to participate must agree in writing that its Homebuyer Agreement will be amended upon approval of the CIAP Application to provide that, as a result of the amount of modernization cost attributed to its home, the purchase price and amortization period will be increased. The HA is required to submit with the CIAP Budget a list of the Turnkey III units to be modernized and the estimated cost attributed to each home. After HUD approval of the CIAP Budget, the HA shall amend the Homebuyer Agreements.

Evidence of Local Consultation. Before submission of the CIAP Application, the HA is required to consult with appropriate local officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development, drug elimination and expenditure of local funds, such as Community Development Block Grant (CDBG) funds. HUD reviews HA compliance with this requirement during Joint Review. Local government support is a technical review factor in HUD's rating of HA applications.

HUD–52822, CIAP Application, requires the following: (1) a general description of HA development(s) including the physical condition (section 14(d)(1) of the Act); (2) the physical and management improvement needs to meet the Secretary's standards

in section 14(j) of the Act (section 14(d)(3) of the Act); (3) general description of major work categories, such as kitchens and bathrooms, required to correct identified deficiencies and estimated costs (section 14(d)(4) of the Act); (4) an estimate of the replacement needs for equipment systems or structural elements (section 14(d)(2) of the Act); and (5) a certification concerning consultation with local officials and residents/homebuyers (section 14(d) of the Act) and the viability of the developments. A copy of this form is attached.

HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements, is required by the Byrd Amendment of HAs established under State law. For funding requests over $100,000, the HA certifies that it has not and will not make any prohibited payment from federally appropriated funds. This has been a statutory requirement since 1989. A copy of this form is attached.

SF–LLL, Disclosure of Lobbying Activities, is required by the Byrd Amendment of HAs established under State law. For funding requests over $100,000, the HA discloses where any funds other than federally appropriated funds will be or have been used to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts. This has been a statutory requirement since 1989. A copy of this form is attached.

After Funding Selection

HUD–52825, CIAP Budget/Progress Report, covers all developments being funded under the modernization program for the current FFY. It consists of three parts: Part I—Summary shows a summary of costs by major development account; Part II—Supporting Pages describes, for each development, management improvement and HA-wide need, the work items being funded to meet identified needs, as required by the Act; and Part III—Implementation Schedule sets forth, for each development, three target dates for program implementation (award of first architect/engineer contract, obligation of all funds, and expenditure of all funds). Part III was previously a separate submission, but has been incorporated into the CIAP Budget for administrative convenience to both HAs and HUD. Part III is used by HAs as a planning tool and by HUD Field Offices as a monitoring tool. Form HUD–52825 is not a new requirement and is the controlling document during implementation in terms of HUD-approved work items and costs. A copy of this form is attached. Form HUD–52825 combines both the CIAP Budget and the Progress Report.

Form HUD–52820, HA Board Resolution Approving CIAP Application, sets forth various certifications by the HA with regard to compliance with Federal laws and regulations and program requirements. The Board Resolution is not a new requirement. A copy of this form is attached.

Form HUD–50070, Certification for a Drug-Free Workplace, is required by the Drug-Free Workplace Act and implementing regulations at 24 CFR Part 630. The Certification has been a statutory requirement since 1989. A copy of this form is attached.

List of Participating Turnkey III Homeownership Units/Costs sets forth the number of Turnkey III homeownership units to be included in the modernization program and, where applicable, the estimated cost attributed to each home. This ensures that the HA is ready to have the homebuyer family execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase prices and an extension of the amortization period where the modernization work involves non-emergency health and safety items. The List is not a new requirement. There is no form for this information collection.

Implementation

Form HUD–52825, CIAP Budget/Progress Report, combines both the CIAP Budget and the Progress Report. (Note: The Progress Report replaces Form HUD–52826, Schedule/Report of Modernization Expenditures.) The HA is required to report semiannually on funds obligated and expended by the HA against funds approved by HUD, and on implementation progress against its implementation schedule. This form provides the HA with a systematic method of recording and reporting its actual obligations and expenditures and for determining the current status of its CIAP programs in progress. It also enables the HUD Field Office to monitor HA obligations and expenditures and to ensure that modernization work is progressing in a timely manner. Where management improvements are included in the approved CIAP Budget, the HA is required to attach a narrative report, describing the current status of each management improvement work item(s), including the numerical status where the performance goal was quantified. The HA also describes any actions taken during the quarter toward accomplishment of the goal and explains any lack of progress or actions taken. Where the report is incomplete, inaccurate or inadequate, the Field Office takes all necessary steps, in writing, by telephone or by site visit, to reach mutual agreement with the HA on corrective action. A copy of this form is attached.

Contracting Documents/Budget Revisions. Based on HA past performance in modernization and in-house capability, HUD establishes thresholds for various contracting actions and budget revisions. The HA is required to submit for prior HUD review and approval actions which exceed the established thresholds. These actions include: architect/engineer and other professional service contracts; construction solicitations; contract modifications; and budget revisions.

Form HUD–53001, Actual Modernization Cost Certificate (AMCC), is required for fiscal closeout of a completed program. The HA submits the cost certificate to HUD when all funds have been expended and all contractor liens have been released. Any necessary adjustments for under- or over-advances of funds are made and then the cost certificate is included in the HA's next regularly scheduled annual audit to verify costs. Following audit and the reconciliation of any figures, the Field Office approves the AMCC. The HA remits any excess funds that may have been provided and any excess authority is recaptured. The AMCC is the primary document used to provide a final accounting of the modernization funds for a particular CIAP program. Such documentation and its audit are essential to the fiscal closeout of programs and ensure a proper accounting of Federal funds.

3. We do not know of any improved information technology that would reduce the burden.

4. All existing information was examined and no duplication was found.

5. There is no similar information already available which could be used or modified for use for the purposes described in paragraph 2.

6. The major statutory requirements, such as the needs assessment and replacement estimate on Form HUD–52822, CIAP Application, do not make any special allowances for small HAs. The Department has made an effort to reduce the level of detail so that smaller HAs may more easily apply for funding.

7. The information is required for HUD review and approval of the HA's modernization program.

8. There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

9. The Department wishes to implement the simplified CIAP for the FY 1993 processing cycle. Accordingly, the Department has prepared an interim rule revising the CIAP to increase efficiency, reduce unnecessary requirements, combine or simplify current requirements, and provide new flexibility for both HAs and HUD. In developing the simplified CIAP, the Department consulted with a number of smaller HAs, including holding a one-day conference, to determine how the CIAP could be simplified and streamlined. The results of that consultation are reflected in this paperwork submission.

10. There is no assurance of confidentiality provided to HAs. This information is public information.

11. There are no questions of a sensitive nature included in the requirements.

12. There is no cost to the Federal Government.

13. See attached tabulation of annual reporting burden.

14. A change in burden hours is being requested due to the decreased number of respondents applying for CIAP assistance and the reduced requirements for the application process. HUD is eliminating the following requirements: (1) Form HUD–52824, Five-Year Funding Request Plan; (2) Modernization Organization and Staffing Plan; (3) HA Report on Local Compliance with Cooperation Agreement; (4) Report on Project Implementation Schedule; (5) Narrative Statement Addressing Technical Review Factors; (6) Lead Toxicity Risk Assessment form; and (7) Form HUD–52827, Physical Needs Assessment. Implementation of statutory requirements as described in paragraph 2 is being simplified.

15. At no increased burden hours for HAs, HUD Field Offices use the information contained in the CIAP Application and CIAP Budget to complete a year-end survey from Headquarters. The survey collects data on all CIAP approvals for the Fiscal Year just ending. This information allows Headquarters to know exactly how many applications were received and the amount of CIAP funds approved for different types of modernization activities. The tabulated results of this survey are available usually in the summer of the following year. The survey results are primarily for internal use, but are made available to outside persons or groups upon request.

B. Collection Information Employing Statistical Methods

Not applicable.

BILLING CODE 4210–33–M

CIAP Application

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0044 (exp. mm/dd/yy)

HA Name	FFY	Replacement Estimate:
		$

Development Priority (1)	Development Number (2)	General Description of Physical Condition and Need (3)	Estimated Cost (4)

I certify that all developments listed in in Column (2) have long-term physical and social viability, including prospects for full occupancy, and that the requirements for consultation with residents/homebuyers and local officials have been met.

Signature of Executive Director and Date

X

form **HUD-52822** (1/12/93)
ref Handbook 7485.1

Instructions for Preparation of Form HUD-52822, CIAP Application

Report Submission: Prepare and submit Form HUD-52822, in an original and two copies (or any lesser number of copies as specified by the HUD Field Office), to the HUD Field Office by the deadline established annually in the Notice of Funding Availability (NOFA), published in the *Federal Register*. Use as many pages of this form as are necessary to complete the application. In addition, send a copy of this form to the appropriate local officials.

Heading Instructions:

HA Name -- Enter the Housing Authority (HA) name.

FFY -- Enter the Federal Fiscal Year (FFY) for which the CIAP Application is being submitted.

Replacement Estimate -- Enter an estimate of the cost to replace equipment systems or structural elements which would normally be replaced over the next 30 years. Do not enter where only funds for planning or management improvements are requested.

Column Instructions:

Column (1), Development Priority -- Enter a number indicating the relative priority for funding for each development listed in Column (2). It is not necessary to enter a number for the categories of "Management Improvements" and "HA-Wide Needs."

Column (2), Development Number -- Enter the abbreviated number (e.g. VA 36-1) of each development in the HA's inventory for which the HA is requesting funding. After listing the HA developments, enter the categories of "Management Improvements" and "HA-Wide Needs," if applicable.

Note: The HA has the option to include only the specific developments for which funding is requested in the current FFY or to include all its developments, regardless of whether funding is requested. The advantages of including all developments is that it then provides HUD and the HA with maximum flexibility during Joint Review to consider funding of any development or, where the HA is approved for funding, to use leftover funds at any development.

Column (3), General Description of Physical Condition and Need -- For each development listed in Column (2), enter a general description of its current physical condition and the major work categories (e.g., kitchens, bathrooms) required to correct identified deficiencies. Separately identify any emergency work. For example: "Development is 25 years old and needs general upgrading in the areas of electrical, plumbing, kitchens, bathrooms and community room. Two accessible units needed to meet Section 504 requirements. Also need exterior lighting, playground equipment, correction of site drainage problem, and new roof (emergency due to major leaks and interior damage)." If a development has no needs, enter "no needs."

For the category of "Management Improvements" listed in Column (2), enter a general description of management deficiencies and improvements needed to correct identified deficiencies. For example: "No preventive maintenance (PM) program. Need to develop PM checklist and train maintenance employee on how to use." The HA shall identify any deficiencies in the following areas: management, financial, and accounting control systems; adequacy and qualifications of personnel employed by the HA in the management and operation of its developments for each category of employment; and adequacy and efficacy of: resident programs and services; development and resident security; selection and eviction of residents; maintenance; unit turnover; and any other management policies and procedures.

For the category of "HA-Wide Needs" listed in Column (2), enter any other needs which are not covered under a specific development or by management improvements. Such needs may include: administration, architect/engineer fees, nondwelling structures and equipment which are not specific to a particular development, etc. For example: "Need architect/engineer to develop plans and specifications for physical work, carry out sealed bid procurement, administer contract and inspect work in progress. Also need new siding on maintenance storage shed which serves all developments."

Column (4), Estimated Cost -- For each development and for each management improvement and HA-wide need in Column (3), enter the estimated cost. Only enter the estimated cost for a major work category which is an emergency; otherwise, enter only the total for each development. If a development has needs, but no funding is requested, or if a development has no needs, enter "zero." Enter a subtotal for the categories of Management Improvements and HA-Wide Needs. Then enter a grand total for the entire HA.

Certifications:

The Executive Director shall sign and date the form and certify that all developments listed in Column (1) have long-term physical and social viability, and that the requirements for consultation with residents/homebuyers and local officials have been met.

APPENDIX I. FORM HUD-50071, CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

Certification for Contracts, Grants, Loans & Cooperative Agreements

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Public Housing Agency / Indian Housing Authority

PHA/IHA Name:	If other than Operating Subsidy or Section 23, enter the Federal Fiscal Year in which the funds are expected to be reserved:	If Operating Subsidy or Section 23, enter PHA's/IHA's Fiscal Year Ending date in which funds are expected to be obligated:

Program/Activity Receiving Federal Grant over $100,000: (mark one)

- ☐ Operating Subsidy
- ☐ Development
- ☐ Drug Elimination Grants
- ☐ Sec.23 Leased Housing Adjustments
- ☐ CGP
- ☐ CIAP
- ☐ MROP
- ☐ Other: (describe)

Acting on behalf of the above named PHA/IHA as its Authorized Official, I make the following certifications to the Department of Housing and Urban Development (HUD):

(1) 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 in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) 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 any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

I certify under penalty of perjury that the foregoing is true and correct.

Authorized PHA/IHA Official: Name &Title :

Signature & Date:

X

form HUD 50071 (1/92)
ref. Handboooks 7417.1, 7475.13, 7485.1, & 7485.3

APPENDIX III. STANDARD FORM (SF)-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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: _____

Federal Use Only:	Authorized for Local Reproduction 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 _____

Authorized for Local Reproduction
Standard Form - LLL-A

CIAP Budget /Progress Report
Part I: Summary
Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0044 (exp. mm/dd/yy)

HA Name	Modernization Project Number	FFY of Grant Approval

☐ Original CIAP Budget ☐ Revised CIAP Budget/Revision Number _____ ☐ Progress Report for Period Ending _____ ☐ Final Progress Report

Line No.	Summary by Development Account	Total Funds Approved		Total Funds	
		Original	Revised	Obligated	Expended
1	Total Non-CIAP Funds				
2	1408 Management Improvements				
3	1410 Administration				
4	1415 Liquidated Damages				
5	1430 Fees and Costs				
6	1440 Site Acquisition				
7	1450 Site Improvement				
8	1460 Dwelling Structures				
9	1465.1 Dwelling Equipment—Nonexpendable				
10	1470 Nondwelling Structures				
11	1475 Nondwelling Equipment				
12	1495.1 Relocation Cost				
13	**Amount of CIAP Grant (Sum of lines 2-12)**				
14	Amount of line 13 Related to LBP Testing				
15	Amount of line 13 Related to LBP Abatement				
16	Amount of line 13 Related to Section 504 Compliance				

Signature of Executive Director and Date

X

HUD Certification: In approving this budget and providing assistance to a specific housing development(s), I hereby certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources (24 CFR 12.50).

Signature of Field Office Manager (or Regional Public Housing Director in co-located office)/OIP Director and Date

X

form **HUD-52825** (01/05/93)
ref Handbook 7485.1

Instructions for Preparation of Form HUD-52825, CIAP Budget/Progress Report, Part I

Report Submission:

For the CIAP Budget:

When requested by HUD, prepare a separate Form HUD-52825 (Parts I, II and III) for the modernization program, describing the activities which are planned to be undertaken with the CIAP funds. Submit the original and two copies (or any lesser number of copies as specified by HUD) of this form to the HUD Field Office. On an as-needed basis, submit a revised form when the HUD-established threshold requires prior HUD approval to revise the CIAP Budget.

For the Progress Report:

At the end of each six-month period, complete the sections of Parts I, II and III as noted on a copy of the original or revised CIAP Budget and mark the box, Progress Report for Period Ending _____. Submit the form and two copies to HUD, together with the narrative report on management improvements, if applicable. Continue reporting every six months until all funds are expended.

Part I: Summary

Heading Instructions:

HA Name - Enter the name of the Housing Authority (HA).

Modernization Project Number - Enter the unique Modernization Project number designated for the CIAP grant. This number is an 13-digit alpha numeric code as follows: two-digit State code (alpha); two-digit Field Office code (numeric); P for Public Housing or B for Indian Housing; three-digit HA number; three-digit Grant number, beginning with the number "9"; and a two-digit FFY number. The first CIAP grant approved shall be 901; e.g., VA05P03690193. The second CIAP grant approved shall be 902; e.g., VA05P03690294.

FFY of Grant Approval - Enter the FFY in which the grant is being approved/was approved.

Type of Submission - Check the appropriate box and indicate whether the submission is the Original CIAP Budget, the Revised CIAP Budget (and revision number), or the Progress Report for Period Ending (enter date, e.g., 3/31/94). Also, check the box, Final Progress Report, if the form is being submitted for the last time for the particular modernization program.

Total Funds Approved:

Line 1 - Enter the Original Funds Approved by HUD, rounded to the nearest ten dollars, for all work that will be undertaken from non-CIAP funds. Enter zero if no work will be undertaken from non-CIAP funds. After initial approval by HUD, enter any cost decrease or increase in the Revised Total Funds Approved column whenever a revised CIAP Budget is submitted to HUD for review and approval.

Lines 2 through 12 - For each line, enter the Original Total Funds Approved, rounded to the nearest ten dollars, or zero if no work will be undertaken in a particular development account. After initial approval by HUD, enter any cost decrease or increase in the Revised Total Funds Approved column whenever a revised CIAP Budget is submitted to HUD for review and approval.

Line 13 - Amount of CIAP Grant - Enter the sum of lines 2 through 12 in the Original Total Funds Approved column. After initial approval by HUD, the sum of lines 2 through 12 in the Revised Total Funds Approved column may not exceed line 13 in the Original Total Funds Approved column.

Line 14 - Amount of line 13 Related to Lead-Based Paint (LBP) Testing - Enter the amount of line 13 related to LBP testing in the Original Total Funds Approved column and, as appropriate, in the Revised Total Funds Approved column.

Line 15 - Amount of line 13 Related to LBP Abatement - Enter the amount of line 13 related to LBP abatement in the Original Total Funds Approved column and, as appropriate, in the Revised Total Funds Approved column. For example, if windows are being replaced, estimate the portion of the funding which is directly related to LBP abatement.

Line 16 - Amount of line 13 Related to Section 504 Compliance - Enter the amount of line 13 related to Section 504 compliance in the Original Total Funds Approved column and, as appropriate, in the Revised Total Funds Approved column.

Total Funds Obligated/Expended:

At the end of the reporting period, e.g., 3/31, for each modernization program for which funds are still being expended, complete this section.

Lines 1 through 12 - For each line, enter the cumulative Total Funds Obligated and Expended at the end of the reporting period.

Line 13 - Enter the sum of lines 2 through 12 for obligated and expended.

Lines 14 through 16 - For each line, enter the amount of line 13 for obligated and expended.

CIAP Budget /Progress Report

Part II: Supporting Pages

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Development Number	Description of Work Items	Development Account Number	Funds Approved			Funds Obligated	Funds Expended
			Original	Revised	Difference		

Page ____ of ____

form HUD-52825

Instructions for Preparation of Form HUD-52825, CIAP Budget/Progress Report, Part II

Part II: Supporting Pages

Development Number - Enter the abbreviated number (e.g., VA-36-1) of the development where the work items will be undertaken. Enter "HA-wide" for work items that relate to an HA-wide activity (e.g., management improvements, administration, non- dwelling equipment).

Description of Work Items - For each development listed, enter a description of all work items (physical or management, as applicable) that will be undertaken at that development, including work that will be funded with non-CIAP funds and no cost items, before listing work items to be undertaken at other developments. Identify work items that will be accomplished by Force Account labor by entering (FA) in parenthesis next to the work item. After entering all work items for all developments being funded, enter a general description of HA-wide activities, such as management improvements, administrative costs, equipment, etc. When work items are subsequently deleted, draw a line through the Description, Development Account Number, and Funds Approved. When work items are subsequently added, enter the new work item under the appropriate development number. Enter the quantity of the work as a percentage or whole number. Specify the per unit cost or the quality of materials. **Note:** Describe administrative costs in sufficient detail to clearly identify items.

Development Account Number - For work items that will be funded from CIAP funds, enter the appropriate development account which corresponds to the work item described under the Description of Work Items column. For appropriate development accounts, refer to Handbook 7485.1 (latest revision). Where funding will be provided from non-CIAP sources, or the work is a no cost item, enter "NA".

Funds Approved:

Original-For each work item and HA-wide activity described, enter the Original Funds Approved. Where appropriate, add a reasonable contingency amount to each work item and indicate the percentage. Asterisk the estimated cost of each work item that will be funded with non-CIAP funds. After listing the estimated cost for all work items at a particular development, enter a subtotal of the estimated cost of only the work items that will be funded from CIAP funds. (**Note**: Do not count costs that have been asterisked in this subtotal). Enter a grand total for Part II of only the work items and HA-wide activities that will be funded with CIAP funds.

Revised-Where the funds approved is revised, enter a Revised Funds Approved as appropriate.

Difference-Enter the difference between the Original and Revised Funds Approved. If the cost increases, put a plus (+) in front of the dollar amount. If the cost decreases, put a minus (-) in front of the dollar amount. When a new work item is subsequently added, enter zero in the original column, show the cost in the revised column and in the column marked difference and put a plus (+) in front of the dollar amount. When a work item is subsequently deleted, show the original cost in the column marked difference and put a minus (-) in front of the dollar amount. Each time there is an increase or decrease in the dollar amount for a particular work item, it must be offset by a corresponding increase or decrease in another work item so that the Revised Total Funds Approved is equal to the amount of the CIAP grant. When the cumulative total of additions equals or exceeds the HUD-established threshold, obtain prior HUD approval before obligating additional funds. When this occurs, complete this form with the appropriate revisions and mark the box Revised CIAP Budget Revision Number _____.

Funds Obligated-Funds Expended - At the end of each reporting period for each CIAP grant with a separate Modernization Project Number for which funds are still being expended, complete the section on Funds Obligated and Funds Expended.

Funds Obligated - In this column, for each development listed, enter the cumulative dollar amount of all funds obligated for that development (round to the nearest ten dollars) opposite the Funds Approved subtotal. This includes funds obligated by the HA for work to be performed by contract labor (i.e., contract award) and force account labor (i.e., work actually started). Funds that are recorded as being obligated shall remain obligated so that total funds obligated are always greater than or equal to total funds expended. Total funds obligated shall not exceed the amount of the CIAP grant. For each HA-wide activity listed, enter the total amount of all funds obligated for that activity (round to the nearest ten dollars) opposite the Funds Approved subtotal.

Funds Expended - In this column, for each development listed, enter the cumulative dollar amount of all funds expended for that development (round to the nearest ten dollars) opposite the Funds Approved subtotal. Total funds expended means cash actually disbursed and does not include retainage. Total funds expended shall not exceed total funds obligated or the amount of the CIAP grant. For each HA-wide activity listed, enter the dollar amount of funds expended for that activity (round to the nearest ten dollars) opposite the Funds Approved subtotal.

CIAP Budget /Progress Report
Part III: Implementation Schedule
Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Development Number	First Architect/Engineer Contract Awarded			All Funds Obligated			All Funds Expended		
	Original	Revised (Attach explanation)	Actual	Original	Revised (Attach explanation)	Actual	Original	Revised (Attach explanation)	Actual

form HUD-52825

Instructions for Preparation of Form HUD-52825, CIAP Budget/Progress Report, Part III

Part III: Implementation Schedule:

Development Number - Enter the abbreviated number (e.g., VA 36-1) of each development listed on Part II. Enter "HA-wide" for work items that relate to HA-wide management improvements.

Implementation Schedule - First Architect/Engineer Contract Awarded - Opposite the affected development, enter the estimated quarter ending date for award of the first architect/engineer (A/E) contract under the Original column. After initial approval by HUD, enter any revised quarter ending date for award of the first A/E contract under the Revised column. When the first A/E contract is awarded, enter the quarter ending date under the Actual column.

Implementation Schedule - All Funds Obligated - Opposite each development and for each HA-wide management improvement, enter the estimated quarter ending date for obligation of all funds under the Original column.

Note: Provide an implementation schedule only for HA-wide management improvements, not for other HA-wide activities (e.g., administration, non-dwelling equipment).

After initial approval by HUD, enter any revised quarter ending date for obligation of all funds under the Revised column. When all funds are obligated, enter the quarter ending date under the Actual column.

Implementation Schedule - All Funds Expended - Opposite each development and for each HA-wide management improvement, enter the estimated quarter ending date for expenditure of all funds under the Original column.

Note: Provide an implementation schedule only for HA-wide management improvements, not for other HA-wide activities (e.g., administration, non-dwelling equipment).

After initial approval by HUD, enter any revised quarter ending date for expenditure of all funds under the Revised column. When all funds are expended, enter the quarter ending date under the Actual column.

Note: Attach an explanation of any revisions to the target dates for A/E contract award, fund obligation, or fund expenditure by specifying the valid delay outside of the HA's control.

HA Board Resolution Approving CIAP Budget

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577--0044 (exp. MM/DD/YY)

Acting on behalf of the Board of Commissioners of the _____ HA, as its Chairman, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD):

1. The HA will comply with all policies, procedures, and requirements prescribed by HUD for modernization, including implementation of the modernization in a timely, efficient, and economical manner;
2. The HA has established controls to ensure that any activity funded by the CIAP is not also funded by any other HUD program, thereby preventing duplicate funding of any activity;
3. The HA will not provide to any development more assistance under the CIAP than is necessary to provide affordable housing, after taking into account other government assistance provided;
4. The proposed physical work will meet the modernization and energy conservation standards under 24 CFR 968.115 or 24 CFR 905.603;
5. The HA will comply with applicable civil rights requirements under 24 CFR 968.110(a) or 24 CFR 905.115, and, where applicable, will carry out the modernization in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973;
6. The PHA has adopted the goal of awarding a specified percentage of the dollar value of the total of the modernization contracts, to be awarded during subsequent FFYs, to minority business enterprises and will take appropriate affirmative action to assist resident-controlled and women's business enterprises under 24 CFR 968.110(b); or the IHA will, to the greatest extent feasible, give preference to the award of modernization contracts to Indian organizations and Indian-owned economic enterprises under 24 CFR 905.165;
7. The HA has provided HUD with any documentation that the Department needs to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 968.110(c), (d) and (m) or 24 CFR 905.120(a), (b), and (j);
8. The HA will comply with the wage rate requirements under 24 CFR 968.110(e) and (f) or 24 CFR 905.120(c) and (d);
9. The HA will comply with the relocation assistance and real property acquisition requirements under 24 CFR 968.108 or 24 CFR 905.117;
10. The HA will comply with the requirements for physical accessibility under 24 CFR 968.110(h) or 24 CFR 905.120(f);
11. The HA will comply with the requirements for access to records and audits under 24 CFR 968.110(i) or 24 CFR 905.120(g);
12. The HA will comply with the uniform administrative requirements under 24 CFR 968.110(j) or 24 CFR 905.120(h);
13. The HA will comply with lead-based paint testing and abatement requirements under 24 CFR 968.110(k) or 24 CFR 905.120(i);
14. The HA has complied with the requirements governing local/tribal government and resident participation in accordance with 24 CFR 968.215(b) and 968.220 or 24 CFR 905.618 (b) and 905.624, and has given full consideration to the priorities and concerns of local/tribal government and residents;
15. The HA will comply with the special requirements of 24 CFR 968.102 or 24 CFR 905.602 with respect to a Turnkey III development; and
16. The PHA will comply with the special requirements of 24 CFR 968.101(b)(3) with respect to a Section 23 leased housing bond-financed development.

Attested By. Board Chairman's Name: (Seal)

Board Chairman's Signature & Date:

X

Warning: HUD will prosecute false claims and statements Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C 3729, 3802)

form **HUD-52820** (12/30/92)
ref Handbook 7485 1

Certification for a Drug-Free Workplace

Public Housing Agency / Indian Housing Authority

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0044 (exp. 10/31/92)

PHA/IHA Name:	If Development or CIAP, enter the Federal Fiscal Year in which the funds are expected to be reserved :
Program/Activity Receiving Federal Grant Funding: (mark one) ☐ Development ☐ CIAP ☐ Operating Subsidy ☐ Sec.23 Leased Housing	If Operating Subsidy or Section 23, enter the PHA's/IHA's Fiscal Year Ending date in which funds are expected to be obligated :

Acting on behalf of the above named PHA/IHA as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

1. I certify that the above named PHA/IHA will 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 PHA's/IHA's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

   b. Establishing a drug-free awareness program to inform employees about the following:
      (1) The dangers of drug abuse in the workplace;
      (2) The PHA's/IHA'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 of the PHA/IHA 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 with the PHA/IHA, the employee will do the following:
      (1) Abide by the terms of the statement; and
      (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

   e. Notifying the HUD Field Office within ten days after receiving notice under subparagraph d. (2) from an employee or otherwise receiving actual notice of such conviction;

   f. Taking one of the following actions within 30 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; 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. thru f.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

2. **Sites for Work Performance.** The PHA/IHA shall list in the space provided below the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. (If more space is needed, attach additional page(s) the same size as this form. Identify each sheet with the PHA/IHA name and address and the program/activity receiving grant funding.)

Signed by: (Name, Title & Signature of Authorized PHA/IHA Official)

Name & Title :

Signature & Date :

X

form HUD-50070 (12/89)
ref. Handbooks 7417.1, 7475.13, 7485.1

Actual Modernization Cost Certificate

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0044 (Exp. mm/dd/yy)

Public Reporting Burden for this collection of information is estimated to average 2.0 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 Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0044), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

HA Name	Modernization Project Number
	FFY of Grant Approval

The HA hereby certifies to the Department of Housing and Urban Development as follows:

1. That the total amount of Modernization Cost (herein called the "Actual Modernization Cost") of theCIAP Grant, is as shown below:

A. Original Funds Approved	$	
B. Revised Funds Approved	$	
C. Funds Advanced	$	
D. Funds Expended (Actual Modernization Cost)	$	
E. Amount to be Recaptured (A–D)	$	
F. Excess of Funds Advanced (C–D)	$	

2. That all modernization work in connection with the CIAP Grant has been completed;

3. That the entire Actual Modernization Cost or liabilities therefor incurred by the HA have been fully paid;

4. That there are no undischarged mechanics', laborers', contractors', or material-men's liens against such modernization work on file in any public office where the same should be filed in order to be valid against such modernization work; and

5. That the time in which such liens could be filed has expired.

Signature of Executive Director	Date
X	

For HUD Use Only

The Cost Certificate is approved for audit.

Approved for Audit (Director, Public Housing Division)	Date
X	

The audited costs agree with the costs shown above

Verified (Director, Public Housing Division)	Date
X	
Approved (Field Office Manager or, in co-located office, Regional Public Housing Director, or OIP Director)	Date
X	

form HUD-53001(12/30/92)
ref Handbook 7485.1

Instructions for Preparation of Form HUD-53001—Actual Modernization Cost Certificate

General Instructions:

Prepare and submit to the HUD Field Office an original and one copy of Form HUD-53001 for each terminated or completed modernization program under the Comprehensive Improvement Assistance Program (CIAP).

Heading Instructions:

HA Name—Enter the name of the Housing Authority (HA).

Modernization Project Number—Enter the unique Modernization Project Number for the grant for which this form is being submitted. This number is the same number as on Form HUD-52825, CIAP Budget, for the same grant.

Federal Fiscal Year of Grant Approval—Enter the FFY in which the modernization program was originally approved.

Line Instructions:

Line 1A, Original Funds Approved—For the identified grant, enter the total CIAP funds originally approved by HUD through a CIAP Amendment to the Consolidated Annual Contributions Contract(s).

Line 1B, Revised Funds Approved—For the identified grant, enter the total revised CIAP funds approved by HUD. This amount will generally be the same as the amount on Line 1A. This amount will be less than the amount on Line 1A where HUD is terminating the grant or otherwise recapturing grant funds.

Line 1C, Funds Advanced—For the identified grant, enter the total funds advanced by HUD. This amount may never exceed the amount on Line 1A and should be the same amount as on Line 1B.

Line 1D, Funds Expended—For the identified grant, enter the total funds expended (total cash disbursed) by the HA. This amount may never exceed the amount on Line 1A and should be the same amount as on Line 1B.

Line 1E, Amount To Be Recaptured (A minus D)—For the identified grant, enter the amount to be recaptured by subtracting Line 1D from Line 1A.

Line 1F, Excess of Funds Advanced (C minus D)—For the identified grant, enter the excess of funds advanced by subtracting Line 1D from Line 1C; this is the amount to be remitted by the HA to HUD. If Line 1D is greater than Line 1C, enter the figure in brackets; this is the amount of funds owed by HUD to the HA.

fo.m HUD-53001

[FR Doc. 93–2163 Filed 1–28–93; 8:45 am]
BILLING CODE 4210–33–C

Office of Administration

[Docket No. N–93–3567]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 13, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Relocation Payment Claim Forms.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: These forms will be used by eligible displaced persons to make proper application for relocation assistance payments.

Form Number: HUD–40054, 40055, 40056, 40057, 40058, 40061 and 40072.

Respondents: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Non-Profit Institutions and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–40054	9,000		1		.5		4,500
HUD–40055	400		1		1.5		600
HUD–40056	400		1		1.0		400
HUD–40057	1,250		1		1.0		1,250
HUD–40058	5,750		1		1.0		5,750
HUD–40061	9,000		1		1.0		9,000
HUD–40072	2,000		1		1.0		2,000

Total Estimated Burden Hours: 23,500.

Status: Reinstatement.

Contact: Melvin J. Geffner, HUD, (202) 708–0336. Angela Antonelli, OMB, (202) 395–6880.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Payment for Labels, Mobile Home Monthly Production Report, Refunds Due Manufacturer, and Adjustment Report.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5400 et seq., authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses these forms to calculate and collect monitoring inspection fees for manufacturing housing units.

Form Number: HUD–301 and 302.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	231		48		.47		5,211

Total Estimated Burden Hours: 5,211.

Status: Extension.

Contact: Jeannie Magee, HUD, (202) 708–0584. Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 93–2164 Filed 1–28–93; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–93–3568]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 15, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Proposed Rule: Section 8 HAPP for Section 8 Certificate and Housing Voucher Program (FR–2294).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Under the Section 8 Rental Certificate Program and Rental Voucher Program, the Department of Housing and Urban Development (HUD) enters into an Annual Contributions Contract (ACC) with Public Housing Agencies to assist very low-income families who enter into leases directly with private owners of existing rental housing.

Form Number: HUD–52515, 52667, 52580, 52663, 52672, 52673, 52681, 52517A, 52595, 52578 and 52646.

Respondents: Individuals or Households and State or Local Governments.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	402,600		5.6698		.3908		892.125

Total Estimated Burden Hours: 892,125.

Status: Revision.

Contact: Madeline Hastings, HUD, (202) 708–2841. Steve Balis, HUD, (202) 708–0995. Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 93–2165 Filed 1–28–93; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–16]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free

number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., rm. 4133, Washington, DC 20314–1000; (202) 272–0520; (This is not a toll-free number).

Dated: January 22, 1993.

Don I. Patch,

Acting Deputy Assistant Secretary for Grant Programs.

Title V, Federal Surplus Property Program Federal Register Report for 1/29/93

California—Fort Ord

Fort Ord is located 7 miles north of the City of Monterey and 120 miles southeast of San Francisco, California 93941–5000. The installation is scheduled for closure on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 26,720 acres and 14 million square feet of permanent facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance and storage facilities; and other more specialized structures.

For specific information concerning Fort Ord, please contact Commander, 7th ID, ATTN: AFZW–RM (LTC Anderson), Fort Ord, California 93941–5000.

Suitable/Available Properties

Property Number: 329210039
Type Facility: Housing—1431 family houses; majority are 2-story.
Property Number: 329210040
Type Facility: Temporary Living Quarters—254 buildings; wood, concrete and concrete block structures including barracks.
Property Number: 329210041
Type Facility: Office/Administration—311 buildings; wood, concrete, concrete block and steel structures including personnel bldgs. and general purpose bldgs.
Property Number: 329210042
Type Facility: Recreation—53 facilities including bowling center, guest houses, community and youth centers, library, gym and recreation bldgs.
Property Number: 329210043
Type Facility: Aircraft/Airport Facilities—18 facilities including hangars, runway, taxiways, aprons, fire station, maintenance bldgs. and control tower.
Property Number: 329210044
Type Facility: Maintenance/Engineering Facilities—24 buildings; wood, concrete block and steel structures.
Property Number: 329210045
Type Facility: Mess/Dining Halls—95 buildings; wood, concrete and concrete block dining facilities.
Property Number: 329210046
Type Facility: Child Care—7 buildings; wood and concrete child care centers.
Property Number: 329210047
Type Facility: Stores and Services—23 buildings; wood, concrete, concrete block and steel structures including stores, snack bars, commissary and service station exchange.
Property Number: 329210048
Type Facility: Hospital Facilities—10 buildings; wood, concrete and concrete block structures including a hospital, clinics and vet. facilities.
Property Number: 329210049
Type Facility: Chapels—10 buildings; wood, concrete, concrete block chapels and chapel center facilities.
Property Number: 329210050
Type Facility: Fire Facilities—2 fire stations.
Property Number: 329210051
Type Facility: Audio Visual Facilities—8 buildings; wood, concrete and steel structures including photo labs and training centers.
Property Number: 329210052
Type Facility: Communications/Electronics Facilities—6 buildings; concrete, concrete block and steel structures including a communication center and radio bldgs.
Property Number: 329210053
Type Facility: Warehouses—224 buildings; wood, concrete, concrete block and steel structures including storage bldgs. and sheds.
Property Number: 329210054
Type Facility: Vehicle Shops—84 buildings; wood, concrete, concrete block and steel structures including maintenance shops and oil storage bldgs.
Property Number: 329210055
Type Facility: Miscellaneous Facilities—440 facilities including hdqts. bldgs., reserve centers, classrooms, day rooms, roads, vehicle parks and training areas.
Property Number: 329210056
Type Facility: Multi-Purpose Facilities—27 facilities.
Property Number: 329210057
Type Facility: Fuel Facilities—31 buildings; concrete, concrete block and steel structures including gas station bldgs.
Property Number: 329210058
Type Facility: Hazardous Storage Facilities—6 buildings; concrete, concrete block and steel structures.
Property Number: 329210059
Type Facility: Explosives/Munitions Facilities—31 buildings; concrete and steel structures including igloo storages and magazine storages.

Suitable/Available Properties

Connecticut

15 Family Houses
Portland CT 36
Portland Co: Middlesex CT 06484
Landholding Agency: COE–BC
Property Numbers: 319011218–319011232
Status: Excess
Base Closure
Comment: 1000–1300 sq. ft., 1 story wood frame residences

Hawaii—Kapalama Military Reservation
Phase III

Kapalama Military Reservation is located in the Harbor district in the City of Honolulu. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 30, 1994. Properties shown below as suitable will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base comprises 21.22 acres and contains nine buildings which are currently being used for storage.

Suitable/Unavailable Properties

Property Numbers: 329210003–329210011
Type Facility: Nine buildings currently used for storage; 116 to 39854 sq. ft.; one story wood frame; needs minor rehab.

Suitable/Available Properties

Illinois

12 Worth Family Houses

Fort Sheridan
Worth Co: Cook, IL 60482
Landholding Agency: COE–BC
Property Number: 329210002
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, off-site use only, scheduled to be vacated 05/93.

Suitable/Unavailable Properties

Illinois

12 Addison Family Houses
Fort Sheridan
Addison Co: DuPage, IL, 60101
Landholding Agency: COE–BC
Property Number: 329210001
Status: Excess
Base Closure
Comment: 1-story residences, possible asbestos, scheduled to be vacated 05/93.

Indiana—Fort Benjamin Harrison

Fort Benjamin Harrison is located northeast of Indianapolis in the City of Lawrence 46216–5000. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2501 acres and has 4.7 million square feet of facilities. The properties that HUD has determined suitable and which are available include family housing residences, temporary living quarters, office/administration buildings, various types of recreational facilities, child care centers and chapels, dining halls, a hospital, warehouses, miscellaneous and other specialized structures. More specific information concerning properties at the base can be obtained by contacting LTC Gregory Miller, US Army Soldier Support Center, Attn: ATZI–IS, Fort Benjamin Harrison, Indiana 46216–5000; (317) 542–5382.

Suitable/Available Properties

Property Numbers: 329210068–329210069
Type Facility: Housing—90 family residences, 1 and 2 story brick frame; 29 temporary living quarters (barracks), brick or concrete frame.
Property Number: 329210070
Type Facility: Office/Administration—26 buildings; wood, brick, concrete or concrete block frame; includes personnel and general purpose buildings.
Property Number: 329210071
Type Facility: Recreational Facilities—28; wood, brick, concrete or concrete block frame; includes gym, canteen, golf course, swimming pool, riding stable, tennis court; bowling center, recreation buildings, basketball and handball courts, baseball fields, track, and playgrounds.
Property Number: 329210072
Type Facility: Child Care Centers—2 buildings; brick frame; 5,818 and 14,457 sq. ft.
Property Number: 329210073
Type Facility: Dining Halls—4; brick frame; 11,075 to 31,439 sq. ft.
Property Number: 329210074
Type Facility: Stores/Services—12 buildings; 140 to 68,899 sq. ft.; brick, wood, concrete or concrete block frame; includes restaurant, commissary, sales stores, exchange branches, and service outlet.
Property Number: 329210075
Type Facility: Hospital, brick frame.
Property Number: 329210076
Type Facility: 2 Chapels; 3,747 and 16,587 sq. ft., brick and aluminum frame.
Property Number: 329210078
Type Facility: 2 Fire Facilities; 2,243 and 3,835 sq. ft.; includes fire station and hose house.
Property Numbers: 329210079, 329210083
Type Facility: 2 Vehicle Shops and Fuel Facility; concrete/asbestos frame; 1 gas station building, 327 sq. ft.
Property Number: 329210080
Type Facility: Maintenance Engineering—6 buildings; 168 to 14,074 sq. ft.; wood, brick or concrete block frame.
Property Numbers: 329210081, 329210082
Type Facility: Explosives/Munitions and Hazardous Storage—10 buildings; 103 to 1,138 sq. ft.; brick, steel, concrete or wood frame; includes ammo magazines and flammable materials storage.
Property Number: 329210084
Type Facility: 23 Warehouses; 960 to 56,650 sq. ft.; brick, concrete or steel frame.
Property Number: 329210085
Type Facility: 150 Miscellaneous Buildings; 31 to 211,364 sq. ft.; includes headquarters and general instruction buildings; training centers and detached garages.
Property Number: 329210086
Type Facility: 5 Multipurpose Buildings.

Land

Property Number: 329210077
Type Facility: 2 Aircraft/Airport Facilities; 938 sq. yds.

Unsuitable Properties

Property Number: 329210087
Type Facility: 1 Recreational Facility; within a floodway.

Massachusetts—Fort Devens

Fort Devens military base is located at Fort Devens, Massachusetts 01433–5000. It is approximately 45 miles west of Boston. All the properties will be excess to the needs of the Army Corps of Engineers on or about October 31, 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation covers 9,283 acres and has approximately 7.4 million square feet of facilities. The properties that HUD has determined suitable and which are available include over 550 single family and multifamily housing units; office and administration buildings, indoor and outdoor recreational facilities; warehouses and multi-use buildings; hospital facilities; stores and service facilities; dining facilities; a chapel; a child care facility; and other miscellaneous and specialized structures.

For specific information concerning Fort Devens, please contact Commander, Fort Devens, Attn: AFZD–T (Mr. Carter Hunt), Fort Devens, Massachusetts 01433–5000.

Suitable/Available Properties

Property Number: 329210012
Type Facility: 54 Office/Administration Buildings; 1,174 to 71,781 sq. ft.; wood, brick or concrete block frame including personnel bldgs., general purpose and support services bldgs.
Property Number: 329210029
Type Facility: 404 Housing units; 1,200 to 4,380 sq. ft.; wood or brick frame; single and duplex residences, multifamily residences—up to 14 units per bldg.
Property Number: 329210015
Type Facility: 150 Temporary Living Quarters; 1,028 to 19,120 sq. ft.; wood, brick or concrete block structures including barracks.
Property Number: 329210013
Type Facility: 27 Recreational Facilities; 155 to 30,000 sq. ft.; wood, brick, steel or concrete block construction including a gym, library, swimming pool, golf clubhouse, and bowling center.
Property Numbers: 329210016, 329210025
Type Facility: Aircraft/Fuel Facilities—7; six gas station bldgs. and pump stations; wood, steel or concrete block structures.
Property Numbers: 329210017, 329210021
Type Facility: Maintenance Engineering/ Vehicle Shops—34 buildings; 120 to 20,310 sq. ft.; wood, brick, steel or concrete block frame including maintenance shops, entomology facility, vehicle maintenance bldgs., oil storage bldgs.
Property Number: 329210018
Type Facility: 11 Stores/Service Buildings; 271 to 107,208 sq. ft.; wood, concrete block or brick frame including commissary, sales store, exchange service station, exchange retail stores.
Property Number: 329210019
Type Facility: 7 Hospital Facilities; 493 to 126,835 sq. ft.; wood, concrete, concrete block or brick frame including clinics, hospital, veterinarian facility, and dental clinic.
Property Number: 329210022
Type Facility: 4 Audio Visual/Photo Labs; 480 to 10,612 sq. ft.; wood or concrete block construction.
Property Number: 329210027
Type Facility: 24 Mess/Dining Halls; 2,403 to 2,717 sq. ft.; wood frame.
Property Number: 329210024
Type Facility: 2 Communication Buildings; 1,322 to 1,749 sq. ft.; concrete block or brick frame; communication centers.
Property Number: 329210026
Type Facility: 92 Warehouses; 49 to 85,790 sq. ft.; wood, concrete, concrete block or steel construction including sheds, storehouse, medical supply, vehicle storage, general purpose bldgs.
Property Number: 329210014
Type Facility: Child Care Facility; 6,012 sq. ft.; wood frame.
Property Number: 329210020
Type Facility: Chapel; 22,250 sq. ft.; brick frame.
Property Number: 329210023
Type Facility: 8 Hazardous Storage Buildings; 64 to 6,000 sq. ft.; concrete, steel or concrete block structures including

oxygen storage facilities and flammable materials storage.
Property Number: 329210028
Type Facility: 172 Miscellaneous Facilities; 320 to 114,000 sq. ft.; wood, concrete block, brick or steel construction including general purpose bldgs., training facilities, RG houses, reserve centers, garages.
Property Number: 329210030
Type Facility: 4 Multi-purpose buildings.

Unsuitable Properties

Property Number: 329210032
Type Facility: 3 Recreation Facilities; within 2,000 feet from flammable or explosive material.
Property Numbers: 329210033, 329210038
Type Facility: One Temporary Living Quarters and 2 housing residences; within 2,000 feet from flammable or explosive material.
Property Number: 329210031
Type Facility: One Office/Administration Building; within 2,000 feet from flammable or explosive material.
Property Numbers: 329210034, 329210037
Type Facility: 6 Miscellaneous Buildings—including stores, service facilities, etc.
Property Number: 329210035
Type Facility: One Vehicle Shop; within 2,000 feet from flammable explosive material.
Property Number: 329210036
Type Facility: One Warehouse; within 2,000 feet from flammable explosive material.

Suitable/Available Properties

Massachusetts

12 Bldgs., Burlington Housing
South Bedford
Burlington Co: Middlesex, MA 01803–
Landholding Agency: COE–BC
Property Number: 329240005
Status: Excess
Base closure—Number of Units: 12
Comment: 1100 sq. ft. each, 1-story wood frame residences, scheduled to be vacated 8/93.

Michigan

Pontiac Storge Facility
871 East South Boulevard
Pontiac Co: Oakland, MI 48054–
Landholding Agency: COE–BC
Property Number: 329240001
Status: Excess
Base closure—Number of Units: 5
Comment: 607,202 sq. ft. warehouse w/steel frame, 4 other structures inc. well house, sentry station, heating plant & water tower located on 31.24 acres.

New Jersey—Fort Dix

Fort Dix is located in the eastern edge of Burlington County, and part of the western edge of Ocean County, New Jersey. It is approximately 17 miles southeast of Trenton, New Jersey. The installation is scheduled for realignment on or about October 1, 1993. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

In particular, the Sheridanville Family Housing complex will be available on or about December 31, 1992. The Sheridanville complex is located on Sailors Pond Road, approx. 1 mile east of State Highway 68.

The Kennedy Courts Family Housing complex is located at the corner of Pemberton-Pointville and Juliustown Roads, approx. 1 mile southeast of County Route 616 (Pemberton-Wrightstown Road). It is not available for homeless assistance use at this time. The majority of the base is being retained for Federal use.

Both complexes contain various types of housing, service stores, maintenance buildings, miscellaneous buildings and other more specialized structures.

For specific information concerning Fort Dix, please contact U.S. Army Training Center, Attn: ATZD–EHP, Jean M. Johnson, Fort Dix, NJ 08640–5506.

Suitable/Available Properties

Sheridanville Family Housing Complex
Property Number: 329220014
Type Facility: Housing—25, 6-unit buildings; 1, 2 or 3 bedrooms, wood frame w/brick veneer facing (12 bldgs. are unavailable due to an approved homeless application)
Property Number: 329220015
Type Facility: Housing—one, 8-unit building, 2 story, 1, 2 or 3 bedrooms, wood frame w/ brick veneer facing (Unavailable due to an approved homeless application)
Property Number: 329220016
Type Facility: Housing—one, 10-unit building; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing
Property Number: 329220017
Type Facility: Housing—11, 12-unit buildings; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing (4 bldgs. are unavailable due to an approved homeless application)
Property Number: 329220018
Type Facility: 33 detached sheds; 1 story, wood frame (14 sheds are unavailable due to an approved homeless application)
Property Number: 329220020
Type Facility: Maintenance Engineering—3 buildings (Unavailable due to an approved homeless application)
Property Number: 329220021
Type Facility: Service Store—1 building, most recent use—PX, wood frame (Unavailable due to an approved homeless application)
Property Number: 329220022
Type Facility: Miscellaneous—3 buildings; waiting shelters (2 bldgs. unavailable due to an approved homeless application)
Property Number: 329220019
Type Facility: Recreational/land—basketball court and softball field (Unavailable due to an approved homeless application)

Note: An approved application for 125 units is being processed.

Suitable/Unavailable Properties

Kennedy Courts Family Housing Complex

Property Numbers: 329220005–329220009
Type Facility: Housing—2, 4, 6, 8 & 10-unit buildings; 1 to 4 bedrooms, wood frame w/ brick veneer facing
Property Number: 329220010
Type Facility: Detached Sheds—48; wood frame, needs rehab
Property Numbers: 329220023, 329220035, 329220043
Type Facility: Office/Administration—42 buildings; concrete or cinderblock w/brick veneer facing, 1, 2 or 3 story, includes classrooms, instructional bldgs., administration & supplies, regimental headquarters, personnel-supply services
Property Numbers: 329220024, 329220036, 329220044
Type Facility: Recreational—12 facilities; includes gym, theater, tennis court, recreation center, museums, community centers
Property Numbers: 329220025, 329220045
Type Facility: Maintenance Engineering—5 buildings; wood, concrete or cinderblock, 1 or 2 story, includes generator and gas meter house
Property Numbers: 329220026, 329220037, 329220046
Type Facility: Service Stores—3 PXs
Property Numbers: 329220027, 329220038
Type Facility: Hospitals—2 buildings; 1 story, concrete or cinderblock w/brick veneer facing
Property Numbers: 329220028, 329220039
Type Facility: Chapels—2; 1 story
Property Numbers: 329220029–329220030, 329220047, 329220050
Type Facility: Vehicle/Fuel—10 facilities; includes gas stations, oil storage bldgs., vehicle greaser, automotive shop
Property Numbers: 329220031, 329220040
Type Facility: Dining Halls—8 facilities; includes enlisted personnel dining, 1 story, concrete or cinderblock w/brick veneer facing
Property Numbers: 329220032, 329220041
Type Facility: Housing—22 buildings; enlisted barracks, 3 story
Property Number: 329220048
Type Facility: Hazardous storage—3 buildings; 1 story
Property Number: 329220049
Type Facility: Communications/Electronics—2; 1 & 2 story
Property Numbers: 329220012–329220013, 329220033, 329220042, 329220051–329220052
Type Facility: Miscellaneous—30 buildings; includes heat plant, waiting shelters, warehouses, and other specialized structures
Property Number: 329220053
Type Facility: Area Confinement Facility; 109,668 sq. ft., 2 story concrete & block frame
Property Number: 329220011
Type Facility: Recreational/land—2; basketball courts

Unsuitable Properties

Property Number: 329220034
Type Facility: Sewage Pump

Suitable/Unavailable Properties

New Jersey

24 Family Houses
Franklin Lakes
Patrick Brems Court
Mahwah Co: Bergen, NJ 07430
Landholding Agency: COE–BC

Property Number 319010734–319010757
Status: Excess
Base Closure
Comment: 1,196 sq. ft., 1 story wood frame residences.

32 Family Houses
Livingston Family Housing
Hornung Court
East Hanover Co: Morris, NJ 07936
Landholding Agency: COE–BC
Property Numbers: 319010758–3190107789
Status: Surplus
Base Closure
Comment: 1,196 sq. ft., 1 story wood frame residences, possible asbestos in floor tiles.

Bldg. PO5605, Fort Dix
8th Street and Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE–BC
Property Number: 329210064
Status: Unutilized
Base closure Number of Units: 1
Comment: 6,137 sq. ft., 1 story, possible asbestos, most recent use-administration/classroom.

Bldg. PO5602, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE–BC
Property Number: 329210065
Status: Unutilized
Base closure Number of Units: 1
Comment: 40,653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.

Bldg. PO5603, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE–BC
Property Number: 329210066
Status: Excess
Base closure Number of Units: 1
Comment: 40,653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.

Bldg. PO5604, Fort Dix
8th Street & Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE–BC
Property Number: 329210067
Status: Excess
Base closure Number of Units: 1
Comment: 12,194 sq. ft., 1 story, presence of asbestos, most recent use—admin/supply building.

Suitable/Unavailable

New York

37 Nike Houses
New York 01
Tappan Co: Rockland NY
Landholding Agency: COE–BC
Property Numbers: 319011049, 319011070–319011105
Status: Excess
Base Closure
Comment: 897 sq. ft., 1 story wood frame residences on concrete slab.

27 Dry Hill Family Housing
Route 3
Watertown Co: Jefferson NY 13601
Landholding Agency: COE–BC
Property Numbers: 319030015–319030041
Status: Excess
Base Closure
Comment: 816–1300 sq. ft., 1 story wood frame residences.

Suitable/Unavailable Properties

Pennsylvania

12 Family Houses
C.E. Kelly Support Facility
Finleyville Area Site 52, S–101–Q
Finleyville Co: Washington, PA 15332
Location: Route 88 to Mineral Beach and turn left
Landholding Agency: COE–BC
Property Numbers: 319011407, 319011409–319011419
Status: Excess
Base Closure
Comment: 1 story frame residences, possible asbestos

12 Family Houses
Monroeville Area Site 25
C.E. Kelly Support Facility
Lindsey Lane R.D. #2
Monroeville Co: Allegheny, PA 15239
Landholding Agency: COE–BC
Property Numbers: 319030051–319030062
Status: Excess
Base Closure
Comment: 1 story frame residences with playground area, possible asbestos

Land (by State)

Pennsylvania

C.E. Kelly Support Facility
Finleyville Area Site 52
Finleyville Co: Washington, PA 15332
Landholding Agency: COE–BC
Property Number: 319011408
Status: Excess
Base Closure
Comment: 11.63 acres, potential utilities, most recent use—playground area.

Virginia—Harry Diamond Laboratories

Harry Diamond Laboratories, Woodbridge Facility is located in Prince William County, Virginia 22191. The installation is scheduled for closure on or about September 1994. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 76,000 square feet of facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include a warehouse, communications facilities and miscellaneous facilities.

For specific information concerning Harry Diamond Laboratories, please contact Commander, U.S. Army Laboratory Command, ATTN: AMSLC–MC (Ms. Ann Barnett), 2800 Powder Mill Road, Adelphi, Maryland 20783–1145.

Suitable/Available Properties

Property Number: 329210060
Type Facility: Communications/Electronic Facilities—3 brick structures.

Property Number: 329210061
Type Facility: Warehouse—1 brick storehouse.

Property Number: 329210062
Type Facility: Miscellaneous Facilities—3 facilities including roads and a vehicle park.

Property Number: 329210063
Type Facility: Multi-Purpose Facilities—2 brick structures including an administrative building.

Suitable/Available Properties

Rhode Island

62 Bldgs., Davisville Housing
Navy Drive
Davisville Co: Kingston, RI 02852–
Landholding Agency: COE—BC
Property Number: 329240003
Status: Excess
Base closure—Number of Units: 62
Comment: sq. ft. varies, 2-story wood frame residences, scheduled to be vacated 8/93.

16 Bldgs., Slaterville Housing
Pound Hill Street
N. Smithfield Co: Providence, RI 02895–
Landholding Agency: COE–BC
Property Number: 329240004
Status: Excess
Base closure—Number of Units: 16
Comment: 1,100 sq. ft. each, 1-story wood frame residences, scheduled to be vacated 8/93.

Virginia

Bldg. 4, DMA Herndon
925 Springvale Rd.
Great Falls, VA 22066
Landholding Agency: COE–BC
Property Number: 329240002
Status: Excess
Base closure—Number of Units: 1
Comment: 4,195 sq. ft., 1-story concrete masonary structure, most recent use—admin., scheduled to be vacated 01/94.

Washington

28 Bldgs., Youngslake Housing
Near 116th St., SE & 192nd St.
Renton Co: King, WA
Landholding Agency: COE–BC
Property Number: 329240006
Status: Excess
Base closure—Number of Units: 28
Comment: 1184–1392 sq. ft., 3-bedroom residences, scheduled to be vacated 8/93.

Indiana

Land—Plant II
Indiana Army Ammunition Plant
Charleston Co: Clark, IN 47111–
Landholding Agency: COE–BC
Property Number: 329220004
Status: Excess
Base closure—Number of Units: 1
Comment: 858.63 acres, 34 acres subj. to flooding, access over private property by easement of roadway, manufac. facility on site not operative for 20 yrs., scheduled to be vacated 11/92.

Unsuitable

Illinois

Bldg. 117, Hangar
Fort Sheridan Co: Lake, IL 60037–5000
Landholding Agency: COE–BC
Property Number: 329230001

Status: Excess
Base closure—Number of Units: 1
Reason: Within airport runway clear zone

Land (by State)

Florida

Cape St. George Reservation
Fort Rucker, AL Installation #12050
Apalachicola Co: Franklin G C FL 32320–
Landholding Agency: COE–BC
Property Number: 329140001
Status: Unutilized
Base closure—Number of Units: 1
Reason: Floodway—Other
Comment: Inaccessible

[FR Doc. 93–2022 Filed 1–28–93; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–43–7122–08–D063; CACA 28709]

Public Scoping Notice for the Addition of Lands to the Study Area for the Proposed Expansion of the U.S. Army's National Training Center at Fort Irwin, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior (Lead Agency); U.S. Army National Training Center (Cooperating Agency).

ACTION: Notice of public scoping for addition of lands to existing study area.

SUMMARY: Notice is hereby given that the Bureau of Land Management is accepting public comment to identify issues of concern on a change to the existing Study Area for the pending Environmental Impact Statement (EIS) on the U.S. Army proposal to expand the National Training Center, Fort Irwin, California. This notice adds an area of approximately 160,200 acres to the existing Study Area. All of this added acreage is within areas currently under the control and jurisdiction of the Department of the Navy, specifically within portions of the Naval Air Weapons Station—China Lake Randsburg and Mojave B test ranges. The Navy lands are adjacent to and west of the current NTC boundary. As a part of the proposed NTC expansion, the Army proposes a joint use of the current Navy withdrawn public lands.

A June 1985 Army Land Use Requirements Study (LURS) determined the need for expansion of the current 642,000 acre NTC located approximately 40 miles north of Barstow, California. Under a June 1988 Memorandum of Agreement, BLM and the Army NTC have been involved in preparation of an EIS for the proposed expansion.

The initial 1988 Army proposal was to expand generally to the south into Coyote Basin, which involved the proposed withdrawal of approximately 250,000 acres of public lands in that area. A draft EIS was initiated. BLM published a public scoping notice for the proposal on August 22, 1988 and initial scoping meetings were held. On October 1, 1991 approximately 265,400 acres of public lands (the initial expansion Study Area) were segregated, for a two year period, from mineral entry based on the withdrawal application received from the Army.

The desert tortoise was listed as threatened on April 2, 1990 and consultation under section 7 of the Endangered Species Act of 1973 was initiated in April 1991. In October 1991 the USFWS developed a draft biological opinion which concluded that the proposed southern expansion would likely jeopardize the continued existence of the threatened desert tortoise. The draft biological opinion suggested consideration of an easterly expansion of the NTC as a reasonable and prudent alternative. The formal consultation process with USFWS was suspended.

On February 12, 1992 an additional 229,200 acres of public lands in the Silurian Valley area were segregated from mineral entry in response to an amended Army withdrawal application. On March 25, 1992 BLM published a notice of scoping for the lands added to the expansion study area. At that time, the total expansion study area involved approximately 494,600 of public lands. Concurrent with that public scoping, Army conducted additional tortoise studies in the North Alvord Slope area from January through September 1992. Based on the results of that data, and the draft USFWS jeopardy biological opinion, the Army redesigned the expansion proposal.

In September 1992, the Army identified a new expansion proposal which was referred to as the "Silurian-Mojave B". This new expansion proposal involves approximately 327,000 acres of proposed public land withdrawal in the Silurian Valley area east of the NTC, an additional 2,560 acres along the southwest NTC boundary, and proposed joint use of approximately 160,200 acres of lands currently under jurisdiction of the Department of the Navy in the Randsburg Wash and Mojave B test ranges west of the NTC. The total proposed expansion therefore involves approximately 490,000 acres. With the identification of this new expansion proposal, the total expansion Study Area is approximately 644,000 acres.

On November 6, 1992 the BLM requested that USFWS reinitiate formal consultation and render a biological opinion on the new expansion proposal. The request for consultation was qualified, with respect to proposed NTC use of Navy lands, to state that Navy concurrence with the proposed joint use will be required to make the expansion proposal viable with respect to the NTC's maneuver acreage requirements. Concurrent with this public scoping, the Department of the Navy, Naval Air Weapons Station-China Lake will complete a missions compatibility analysis to determine the viability of joint use with the NTC. Based on that analysis, the Navy role and participation in the EIS process will be determined.

The public is invited to provide additional scoping issues for the new proposed expansion proposal involving proposed Army use of Navy lands. Known issues within the area are wildlife including desert tortoise and its habitat, sensitive plants, cultural resources, and mission compatibility of current Navy uses and proposed Army use.

Specific expansion alternatives for the EIS will be finalized at the conclusion of this public scoping opportunity. The current Army proposed expansion, specifically the proposed use of Department of the Navy lands, is not considered an EIS alternative at this time. A decision on its status as an alternative is pending completion of the Navy missions compatibility analysis.

Information and maps on the project background and current expansion proposal are available at the address listed below.

DATES: Scoping comments on the addition of the Navy lands proposed for joint use by the Army must be postmarked no later than March 8, 1993.

ADDRESSES: Written comments should be sent to Mike DeKeyrel, Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311; (619) 256–3591.

Dated: January 21, 1993.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 93–2197 Filed 1–28–93; 8:45 am]
BILLING CODE 4130–40–M

Closure Order—Atlas Superfund Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Approximately 435 acres of public lands disturbed by the abandoned Atlas mine and mill, which includes the Environmental Protection Agency's Superfund site boundary for the Atlas Mine Operable Unit located

within San Benito and Fresno Counties, in the Hollister Resource Area, Bakersfield District, California, are hereby closed to entry and all public use.

SUMMARY: This action amends the closure order published in the **Federal Register** Vol. 53, No. 246, page 51590 on December 22, 1988, which closed off 200 acres of public land at the Atlas Mine. This expanded closure order will eliminate all on site public access within the entire boundary of the Atlas Superfund site operable unit. This action is necessary to comply with the need to preclude all public use of a Superfund site until the selected remedy has been applied and EPA determines the risk to humans has been reduced to an administratively determined level. The site boundary encompasses areas that have been disturbed by the past mining operation and are under EPA jurisdiction per the CERCLA regulation for future site reclamation. This area is hereby closed to all public entry and use and this closure is in effect on all public lands described below (A man depicting the closure can be viewed at the Hollister Resource Area Office).

Sections 29, 30, 31, & 32, T. 18S., R.13E., M.D.M. Section 25, T. 18S., R. 12E., M.D.M.

SUPPLEMENTARY INFORMATION: This order is necessary for the protection of public health. Soils on the mine site contain high concentration of asbestos fibers. Inhaling asbestos fibers is known to increase the risk of lung cancer and other respiratory diseases. When the surface of the mine site is disturbed by vehicles or foot traffic, a fine powered dust containing asbestos fibers is released into the air. Because of health hazards associated with asbestos this site has been placed on the Environment Protection Agency's National Priorities List (Superfund). All access trails which enter the site have been fenced posted with closed area/asbestos warning signs. The White Creek Road, which bisects the mine site will be gated and locked to restrict public use. This closure is issued under the authority of 43 CFR 8364.0–7. Federal, State, and County Employees and/or their contractors while requiring ingress and egress and individuals in possession of written authorization from the Hollister Resource Area Manager shall be exempt from this closure order.

DATES: This order is in effect immediately and is in effect until the order is canceled, amended, or replaced.

FOR FURTHER INFORMATION CONTACT: Robert E. Beehler, Area Manager, Hollister Resource Area, Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023; telephone (408) 637–8183.

Dated: January 21, 1993.

Robert E. Beehler,

Area Manager.

[FR Doc. 93–2126 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–84–M

[CO–010–02–4320–02]

Craig District Grazing Advisory Board Meeting

Time and Date: February 16, 1993 at 10 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to the public, interested persons may make oral statements between 10 a.m. and 11 a.m., or may file written statements.

Matters to be Considered:

1. Election of officers.
2. Project presentations.
3. Worbex.
4. Advisory Board Well funded position.
5. Dump truck discussion.

Contact Person for More Information: Jim Andersen, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129. Phone: (303) 824–8261.

Dated: January 8, 1993.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 93–2106 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–05; N–41568–38]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP lease/purchase of public lands in Clark County.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land in order to expand the adjacent senior high school site. A R&PP lease was issued to the Clark County School District for the adjacent 35 acre school site on March 10, 1992.

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 23, NE¼SE¼SE¼NW¼, N½SW¼SE¼NW¼.

Containing 7½ acres more or less.

The land is not required for any Federal purpose. The lease/purchase is consistent with the Bureau's planning for this area and would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1980, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas.

2. Those rights for a 12.5 KV distribution line which have been granted to Nevada Power Company by permit No. N–15291 under the Act of October 21, 1976.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/purchase until after the classification becomes effective.

Dated: January 20, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–2133 Filed 1–28–93 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–4210–05; N–56714]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP lease/purchase of public lands in Clark County.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for construction of a senior high school site.

Mount Diablo Meridian, Nevada

T. 19 S., R. 59 E.,
Sec. 24, SE¼NE¼SE¼, E½NE¼NE¼SE¼, SE¼SE¼, W½NE¼SE¼.

Containing 75 acres more or less.

The land is not required for any Federal purpose. The lease/purchase is consistent with the Bureau's planning for this area and would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/purchase until after the classification becomes effective.

Dated: January 19, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–2134 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–HC–M

[ID–010–4333–02]

Recreation Management Restrictions; Boise District, ID

AGENCY: Boise District, Bureau of Land Management, Department of the Interior.

ACTION: Notice is given that the emergency drought closure in the Owyhee Front Special Recreation Management Area (effective May 13, 1992) which limited the size of organized recreational events is hereby rescinded. The 15-person maximum group size restriction no longer applies.

SUMMARY: Because of extreme drought conditions in 1992, it was necessary for the Owyhee Resource Area of the Boise District to temporarily restrict the size of organized recreation events in the Owyhee Front Special Recreation Management Area (SRMA) to a maximum of 15 persons to reduce the potential for damage to soil and vegetative resources. Precipitation for the winter of 1993 is at or above normal for those lands affected by the Owyhee Front SRMA. Permit applications for all types of competitive recreational events and for events involving 50 or more vehicles will be accepted beginning February 15, 1993. The authorization of recreational group events will be considered on a case-by-case basis in accordance with standards and procedures established by the BLM Special Recreation Permit Policy (43 CFR part 8372). The public is encouraged to make use of the existing recreational facilities at the Hemingway Butte, Rabbit Creek and Fossil Creek Trailheads whenever possible.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Jay Carlson, Owyhee Area Manager, Boise District, BLM at (208) 384–3430.

Dated: January 20, 1993.

R.E. Schmitt,

Associate District Manager, Boise District.

[FR Doc. 93–2127 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–GG–M

[NM–940–03–4730–12]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on February 19, 1993.

New Mexico Principal Meridian, New Mexico

T. 18 N., R. 15 W., Accepted November 30, 1992, for Group 844 NM.
T. 17 N., R. 15 W., Accepted November 30, 1992, for Group 843 NM.
T. 18 S., R. 4 W., Accepted December 15, 1992, for Group 906 NM.
T. 10 N., R. 16 W., Accepted December 15, 1992, for Group 746 NM.

Supplementals

T. 18 S., R. 4 W., Accepted December 15, 1992.
T. 8 S., R. 13 W., Accepted December 15, 1992.
T. 17 N., R. 14 W., Accepted December 15, 1992.
T. 26 S., R. 3 E., Accepted December 15, 1992.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-list plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

John H. Whiting,

Acting Chief, Cadastral Survey.

[FR Doc. 93–2146 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Desert Pupfish for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the desert pupfish (*Cyprinodon macularius*). This fish occurs in Quitobaquito Springs, Arizona; Salton Sink, California; El Doctor, Laguna Salada, and Cerro Prieto in Baja California, Mexico; and Rio Sonoyta in Sonora, Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before March 30, 1993, to receive consideration by the Service.

EFFECTIVE DATE: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas Rd., suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plans should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Sally Stefferud, Fish and Wildlife Service Biologist; Telephone (602) 379–4720 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implemention the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal Agencies will also take these comments into account in the course of implementing approved recovery plans.

The desert pupfish is an endangered species which exists in Quitobaquito Springs, Arizona; Salton Sink, California; El Doctor, Laguna Salada, and Cerro Prieto in Baja California, Mexico; and Rio Sonoyta in Sonora, Mexico. The species occurs in springs, streams, marshes, and shallow margins of larger lakes and rivers. Habitat loss and degradation, competition and predation by exotic fishes, and pollution have eliminated desert pupfish throughout most of its historic range and threaten its continued existence.

The recovery goals are to secure, maintain and replicate all extant natural populations, acquire natural habitats, and to establish replicates in the most natural habitats within the probable historic range. Further objectives include determination of habitat and biological criteria, acquisition of life history information, development and implementation of genetic protocol, population monitoring, and information and education.

The desert pupfish recovery plan has already undergone technical review. The plan will be issued as final following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 15, 1993.

James A. Young,

Acting Regional Director.

[FR Doc. 93–2108 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Finding of No Significant Impact and Environmental Assessment for Moreno Highlands Boundary Amendment to the Stephens' Kangaroo Rat Incidental Take Permit for Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a draft Finding of No Significant Impact (FONSI) for Moreno Highlands, one of 23 study-area boundary modifications to a permit allowing incidental take of the endangered Stephens' kangaroo rat (*Dipodomys stephensi*) (SKR) in Riverside County, California, is available for public review. Also available is an Environmental Assessment (EA). This notice is provided pursuant to 40 CFR 1501.4(e)(2).

DATES: The draft FONSI and EA are available for public review until March 1, 1993.

ADDRESSES: Persons wishing to review the draft FONSI and EA may obtain a copy by contacting the Carlsbad, California Field Office, 2730 Loker Ave. West, Carlsbad, California, 619–431–9440. Documents will be available for public inspection during normal business hours (8 a.m. to 4:30 p.m.). Any comments concerning the draft FONSI and EA should be submitted to the Carlsbad, California Field Office. Please reference permit number PRT–739678 with your comments.

FOR FURTHER INFORMATION CONTACT: Mr. John Bradley at the above Carlsbad, California Field Office.

SUPPLEMENTARY INFORMATION: The County of Riverside, California, and the other permittees under PRT–739678 have applied to the Fish and Wildlife Service for a proposed amendment to their existing incidental take permit that would authorize changes in the Stephens' kangaroo rat (SKR) reserve study area boundaries. These changes,

known as the "second-round boundary modifications" would change the areas where incidental take is allowed under the permit. They would not increase the amount of authorized incidental take.

The Moreno Highlands amendment (San Jacinto (SJ–1)) is one of 23 boundary modifications proposed by the permittee. This study area is the largest (21,530 acres) of the potential reserve sites identified in the SKR short-term Habitat Conservation Plan and contains the second largest amount of occupied habitat (2,225 acres). Over 90 percent of the study area's occupied SKR habitat and over 60 percent of its total area are under public ownership and are managed by the California Department of Fish and Game and the California Department of Parks and Recreation. The Proposed action for the Moreno Highlands boundary modification would result in the reduction of the size of the study area by up to 2,494 acres (12 percent) and the amount of occupied habitat in the study area by 82 acres (less than 4 percent).

Dated: January 22, 1993.

John H. Doebel,

Acting Regional Director.

[FR Doc. 93–2109 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32232]

Burlington Northern Railroad Company—Trackage Rights Exemption—Trinidad Railway, Inc.

Trinidad Railway, Inc. has agreed to grant local trackage rights to Burlington Northern Railroad Company over approximately 29.9 miles of rail line, between milepost 0.0 at Jansen, CO, and the end of the line at or near New Elk Mine, CO, at approximately milepost 29.9. The trackage rights were to become effective on January 22, 1993.

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: Peter M. Lee, Burlington Northern Railroad Co., 3800 Continental Plaza, Fort Worth, TX 76102.

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).

Decided: January 25, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2167 Filed 1–28–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 344X)]

Burlington Northern Railroad Co.; Abandonment Exemption; in Thurston County, WA

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon its 14.42-mile line of railroad between Yelm (milepost 25.55) and Tenino (milepost 40.18), in Thurston County, WA, including the stations of Ranier (milepost 31.1), Wetico (milepost 32.9) and West Tenino (milepost 40.0).

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.7(b), 49 CFR 1105.8(c), 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 1, 1993, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 8, 1993.[4] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1993, with: Office of the Secretary Case, Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to BN's representative: Sarah J. Whitley, Attorney, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. SEE will prepare and issue an environmental assessment (EA) by February 3, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/trail banking conditions will be imposed, where appropriate in a subsequent decision.

Decided: January 21, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2168 Filed 1–28–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] Pursuant to 49 CFR 1152.(d)(2), the railroad must file a verified notice with the Commission at least 50 days before abandonment or discontinuance is to be consummated. BN indicated in its verified notice a proposed consummation date of February 25, 1993; however, because the verified notice was not filed until January 11, 1993, consummation should not take place prior to March 2, 1993. BN's representative has confirmed the corrected consummation date.

[2] Ordinarily, a stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment (SEE) in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–167 (Sub–No. 1109X)]

Consolidated Rail Corp.; Abandonment Exemption; Between Valparaiso and Gary, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 17.8 miles of rail line between milepost ±424.0 at Valparaiso, and milepost ±441.8 at Gary (Tolleston), in Lake and Porter Counties, IN.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 28, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 8, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P. O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by February 3, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 25, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2169 Filed 1–28–93; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

[Docket No. AB–43 (Sub-No. 156X)]

Illinois Central Railroad Co.; Abandonment Exemption; Between Varnado Switch and Bassfield, MS

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 27.1 mile line of railroad from milepost 5, near Varnado Switch, to milepost 32.1, near Bassfield, MS, in Lamar, Forrest and Jefferson Davis Countries, MS.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 28, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 8, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 N. Cityfront Plaza Drive—20th Floor, Chicago, IL 60611.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources.

The Section of Energy and Environment (SEE) will issue an

[1] Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 4 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

environmental assessment (EA) by February 3, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2170 Filed 1–28–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; United States v. Westinghouse Bayside Communities, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, notice hereby is given that a consent decree in *United States* v. *Westinghouse Bayside Communities, Inc.*,. No. 93–10–CIV–FTM–99, was lodged with the United States District Court for the Middle District of Florida on January 14, 1993.

The proposed consent decree concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311, 1344, as a result of unpermitted discharges of fill material onto portions of property located in Lee County, Florida, that are alleged to constitute "waters of the United States." The consent decree encompasses a permanent injunction and requires Westinghouse Bayside Communities, Inc., to perform a full restoration by the removal of all existing fill from the violated fifteen acres of wetlands, to pay a civil penalty of $199,088 to the U.S. Treasury, and to undertake a five-year mitigation/enhancement project concerning 98 acres of wetlands on the property.

The Department of Justice will receive written comments relating to this consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: David M. Thompson, Attorney, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice, room 7119, 10th & Pennsylvania, Washington, DC 20530 and should refer to *United States* v. *Westinghouse Bayside Communities, Inc.*, DJ Reference No. 90–5–1–4–329.

The consent decree and accompanying exhibits may be examined at the Clerk's Office, United States District Court for the Middle District of Florida, 2301 First Street, Fort Myers, Florida 33901, or a copy may be requested from David M. Thompson, (202) 514–2617.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 93–2195 Filed 1–28–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); United States et al. v. Rohm and Haas, et al.

In accordance with 42 U.S.C. 9622 and 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in United States et al. v. Rohm and Haas, et al., Civil Action No. 85–4386, was lodged with the United States District Court for New Jersey, on January 19, 1993. The consent decree partially resolves the United States' and the State of New Jersey's claims under, *inter alia*, section 107 of CERCLA against the three primary defendants involved with the Lipari Landfill Superfund Site (Site), located in Mantua, New Jersey. The Lipari Landfill is the number one Hazardous Waste Site on the National Priorities List. The three primary defendants are Rohm and Haas, a generator within the meaning of section 107 of CERCLA, Owens-Illinois, a generator and a transporter within the meaning of section 107 of CERCLA, and the Manor defendants (Manor Care, Inc., Manor Healthcare Corp., and Portfolio One, Inc., who are the corporate successors to Almo Tank Cleaning and Maintenance Co., a transporter within the meaning of section 107 of CERCLA). Under the terms of the partial consent decree, the three primary defendants will resolve their liability to the United States and State of New Jersey for the costs associated with the remedies selected in the Records of Decision (ROD) I and II, and certain components of ROD III. RODs I and II constitute the on-site remedy, while ROD III constitutes the off-site remedy. The settled components of ROD III include (a) the construction and operation of the seepage control system, including the wellpoint interception system, the French drain and the associated cap downgradient of the containment system and (b) the remediation of the Kirkwood Aquifer in the area impacted by the Landfill.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.* v. *Rohm and Hass, et al.*, D.O.J. No. 90–11–3–86.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of New Jersey, 402 East State Street, Trenton, New Jersey 08608; Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, (202) 347–7829. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $13.75 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–2194 Filed 1–28–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corp.

Notice is hereby given that, on January 4, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation has filed written notifications simultaneously with the Attorney General and Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new affiliate members are AG Associates, Sunnyvale, CA; Brantford Computer Haus, Ltd., Ontario, Canada; and PDF Solutions, Pittsburgh, PA.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and Semiconductor Research Corporation intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Semiconductor Research Corporation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985, 50 FR 4281.

The last notification was filed with the Department on July 13, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 19, 1992, 57 FR 37557.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 93-2196 Filed 1-28-93; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 9:45 A.M., Tuesday, March 9, 1993.

PLACE: Sam Houston State University Hotel, Avenue H at 16th Street, Huntsville, Texas.

STATUS: Open.

MATTERS TO BE CONSIDERED: An update on the Intensive Correctional Leadership Training Program, a progress report on the Corrections Options Incentive Act, the Corrections Telecommunications Systems, foreign technical assistance, the mental health services policies, the NIC annual Corrections Report, the dedication of the Robert J. Kutak Memorial Library, and national corrections medical issues—future considerations/action.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307-3106.

M. Wayne Huggins,

Director.

[FR Doc. 93-2211 Filed 1-28-93; 8:45 am]

BILLING CODE 4410-36-M

LEGAL SERVICES CORPORATION

Designate Recipient of State Support Grant for the Provision of Legal Services in the State of Texas

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to make a grant to Texas Legal Services Center to provide state support services to the Legal Services Corporation's recipient programs in the State of Texas. This grant will be made effective March 1, 1993.

The grant will be awarded pursuant to authority conferred by section 1006(a)(1)(A) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice.

DATES: All comments and recommendations must be received on or before 5 p.m. March 1, 1993.

ADDRESSES: Comments should be sent to the Office of Field Services, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Jay Brown, Grants Specialist, Grants and Budget Division, Office of Field Services, (202) 336-8828.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. Texas Legal Services Center has been providing "state support" services in Texas as a subgrantee of Legal Aid Society of Central Texas since 1977. With the consent of Legal Aid Society of Central Texas, the Legal Services Corporation intends to award the state support grant directly to Texas Legal Services Center.

The amount of the 1993 grant to Texas Legal Services Center will be the same as legal Aid Society of Central Texas would have received for state support in 1993, less the funds already granted to Legal Aid Society of Central Texas for the months of January and February, 1993. Thus, Texas Legal Services Center will receive $348,738 for the remainder of 1993, and its annualized funding level for 1993 will be $416,854.

Dated: January 26, 1993.

Charles T. Moses, III,

Deputy Director, Office of Field Services.

[FR Doc. 93-2186 Filed 1-28-93; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by February 25, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by February 18, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Marianne Klink, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 110 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revised collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Music Ensembles and Festivals Application Guidelines FY 1994.

Frequency of Collection: One Time.

Respondents: State or local arts agencies; non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state, regional or local arts agencies that apply for funding under the Challenge Program category guidelines.

Estimated Number of Respondents: 555.

Average Burden Hours per Response: 36.162.

Total Estimated Burden: 20,070.

Marianne Klink,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 93-2135 Filed 1-28-93; 8:45 am]

BILLING CODE 7537-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by February 23, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by February 18, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Marianne Klink, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202–682–5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revised collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for: (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Under-Served Communities Set-Aside Special Projects Rural. Development Projects 1994 Guidelines.

Frequency of Collection: One Time.

Respondents: State arts agencies.

Use: Guideline instructions and applications elicit relevant information from state arts agencies that apply for funding under the Under-Served Communities Set Aside Special Projects, Rural Development Projects 1994 Guidelines.

Estimated Number of Respondents: 26.

Average Burden Hours per Response: 15.

Total Estimated Burden: 390.

Marianne Klink,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 93–2136 Filed 1–28–93; 8:45 am]

BILLING CODE 7537–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–6974; 34–31751; 35–25738; 39–2299; IA–1360; IC–19225; File No. S7–2–93]

Alternative Dispute Resolution Policy

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: The Securities and Exchange Commission solicits comment on how alternative dispute resolution and negotiated rulemaking processes might be used in the Commission's activities, in order to assist the Commission in developing an appropriate policy on its use of such processes.

DATES: Comments should be received on or before April 1, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–2–93. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael G. Lenett (202) 272–3094, Senior Counsel, Office of General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 15, 1990, President Bush signed Public Law 101–552, the Administrative Dispute Resolution Act.[1] Companion legislation, Public Law 101–648, the Negotiated Rulemaking Act, was signed by the President on November 29, 1990.[2] The two Acts authorize federal agencies to use alternative dispute resolution (commonly referred to as "ADR"), such as arbitration, mediation, and other consensual methods of resolving disputes, and regulatory negotiation in drafting agency rules (commonly referred to as "reg-neg"), while not actually mandating the employment of ADR or reg-neg. The Acts do require, however, an evaluation by all federal agencies of potential areas for ADR leading to the adoption of an appropriate agency ADR policy, and compliance with certain rules if ADR or reg-neg is used by the agency.

The Commission has formed an ADR and Reg-Neg Task Force to evaluate the utility of ADR procedures and reg-neg to the Commission's activities, with a view toward promulgating an appropriate ADR and reg-neg policy for the Commission. The purpose of this release is to solicit comments on the utility of ADR procedures and reg-neg to the Commission's activities to assist the Commission in its effort to develop an appropriate policy.

II. Background

A. The ADR and Reg-Neg Acts

Alternative means of dispute resolution are procedures, often involving a neutral third party, that are used in lieu of adjudication to resolve issues in controversy. The primary methods of ADR are negotiation,[3] conciliation,[4] convening,[5] facilitation,[6] early neutral evaluation,[7] mediation,[8]

[1] Public Law 101–552, 104 Stat. 2736, 5 U.S.C. 571–583.

[2] Public Law 101–648, 104 Stat. 4969, 5 U.S.C. 561–569.

[3] Negotiation is a process in which the parties meet face to face to reach a mutually acceptable resolution of a dispute of certain issues. Philip J. Harter, "Points On A Continuum: Dispute Resolution Procedures and the Administrative Process," 1 The Administrative Law Journal 141, 150 (1987) [hereinafter cited as "Harter"].

[4] Conciliation is the attempt by a neutral third party to reduce tensions and improve communications among the parties in an effort to get them to agree on a process for resolving their dispute. Harter, at 149–150.

[5] Convening is a process by which a neutral third party helps identify the disputes or issues in controversy and the interested parties to the dispute or issues. The neutral also will try to bring the parties together to negotiate if negotiation is the recommended course of action. Harter, at 149.

[6] Facilitation is the attempt by a neutral third party, without becoming deeply involved in the substantive issues, to bring the disputing parties together to agree on a process for resolving their dispute. Harter, at 149.

[7] Early neutral evaluation is consultation by opposing attorneys, at an early stage in a dispute, with an impartial attorney who gives an advisory opinion about what the outcome would be if the case were to go to litigation. Marguerite Millhauser, "Dispute Resolution: An Overview of Basic Processes," p.4 (1989), reprinted in Administrative Conference of the United States, Federal Agency Use of ADR: A Rountable for Agency Dispute Resolution Coordinators (June 11, 1990).

[8] Mediation is the assistance of a neutral third party, who has no power to render a decision, in a negotiation process. Harter, at 148–149.

mini-trails,[9] factfinding,[10] arbitration,[11] or any combination of these.

The ADR Act requires the Commission, in common with all agencies, to: (1) Designate an ADR specialist; (2) review all Commission activities and adopt a policy regarding the potential use of ADR techniques; (3) provide ADR training for employees involved in developing and implementing the ADR policy; and (4) review agency contracts, grants, and other assistance programs to determine whether they should authorize and encourage ADR.[12] In developing its policy, the Commission is directed to examine ADR in connection with formal and informal adjudications; rulemakings; enforcement actions; issuing and revoking licenses or permits; contract administration; litigation brought by or against the agency; and other agency actions.[13] The ADR Act does not mandate the use of ADR in any specific case or category of cases, nor does it prescribe a deadline for the adoption of an ADR policy.

Negotiated rulemaking is a procedure by which an agency invites the parties that will be affected by a prospective rule to join the agency in forming an ad hoc committee to develop a consensus draft of the rule. The Reg-Neg Act is the result of a congressional finding that agencies are currently using rulemaking procedures that may discourage affected parties from meeting with each other, negotiating, and sharing information and expertise, thereby giving rise to expensive and time-consuming litigation over agency rules.[14] The goal of negotiated rulemaking is to improve the substance and increase compliance with agency rules, and to decrease litigation challenging agency rules.

The Reg-Neg Act authorizes agencies to use negotiated rulemaking procedures if the head of the agency determines that the use of such procedures is in the public interest.[15] Although the Act does not mandate the use of reg-neg or the adoption of a policy, it does prescribe certain procedures if reg-neg is used and encourages agencies to use reg-neg when it would enhance the rulemaking process.

B. Commission Response

On March 18, 1991, Chairman Breeden designated the General Counsel, James R. Doty, to be the Commission's ADR Specialist. The General Counsel formed the ADR and Reg-Neg Task Force with representatives from the various offices and divisions of the Commission to examine all aspects of Commission activities in order to determine where ADR and reg-neg procedures may be appropriate. The Task Force is currently engaged in this evaluation.

On June 3, 1991, the Commission authorized the General Counsel to publish a release concerning the Commission's response to the Acts. The Release stated that the General Counsel had been appointed the Commission's ADR Specialist and had formed the Task Force.[16] In addition, the Release informed the public that the Commission intended to issue another release soliciting comments regarding the utility of ADR and reg-neg to the Commission's activities. Finally, the Release announced that, in the interim, until a policy is adopted, the Commission "does not intend to consider employing ADR or reg-neg on a case-by-case basis."

III. Request for Comments

The following request for comments is organized by functions of offices and divisions within the Commission. Following a brief discussion of certain general guidelines for commenters is a description of the Commission's rulemaking programs and a request for comments as to the utility of reg-neg to those activities. Following is a general description of the activities of each office and division of the Commission, focusing on those areas in which recurring disputes arise or rules are promulgated. These latter statements are set forth in alphabetical order, with division statements preceding office statements, and include general and specific questions regarding the utility of ADR to Commission activities.

A. General Guidelines

A few general notes should guide commenters:

1. Notwithstanding the organization of this Release by division and office, commenters should feel free to comment generally upon the utility of ADR or reg-neg to broad functions of the Commission (e.g., rulemaking, litigation) rather than to specific office or division activities. Also, commenters should feel free to comment on any aspect of ADR or reg-neg in connection with any Commission activity, whether or not specifically requested.

2. Commenters advocating the use of ADR by the Commission are encouraged to specify the particular type(s) of ADR that they are recommending. In this regard, commenters should not feel constrained by particular titles of ADR techniques; rather, commenters should focus on describing the recommended method, whether it be one of the methods noted above, a combination of those, or some other method. If reg-neg is suggested, commenters should describe the details of the proposed process.

3. Commenters should be mindful of, and should address, certain factors that may suggest the appropriateness or inappropriateness of ADR or reg-neg in certain areas. For example, ADR may be appropriate for disputes in which: (1) The standard process produces unsatisfactory results, is too slow, or is too resource-intensive or otherwise expensive; (2) contentiousness and acrimony in the process could be reduced; (3) parties to the process could be expected to be more willing to follow through to implement a decision; (4) cases are routine or otherwise not precedent-setting; or (5) confidential communication with a third party expert or non-expert would be helpful. On the other hand, ADR may be inappropriate, as stated in the Act itself, in the following circumstances:

(1) A definitive or authoritative resolution of the matter is required for precedential value, and an ADR proceeding is not likely to be accepted generally as an authoritative precedent;

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and an ADR proceeding would not likely serve to develop a recommended policy for the agency;

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not

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[9] Mini-trials are meetings at which the decisionmakers for each side and, usually, a neutral third party, hear a summary of the best case for litigation presented by attorneys for each side. Following these presentations, the decisionmakers attempt to negotiate their differences, often with the assistance of the neutral. The neutral may render an opinion or provide more limited advice to the parties. Harter, at 147–148.

[10] Factfinding is the investigation of issues by a neutral third party who possesses expertise in the subject matter. The neutral gathers information from all sides and prepares a summary of key issues. Harter, at 146–147.

[11] Arbitration is a hearing conducted by a neutral third party who hears facts and arguments presented by each side and renders a decision (non-binding or binding, as agreed by the parties) in light of relevant laws and procedures. Harter, at 145–146.

[12] Public Law 101–552, section 3, 104 Stat. 2736–37 (1990).

[13] Public Law 101–552, section 3(a)(2), 104 Stat. 2737 (1990). In addition, by Executive Order 12778, 56 FR 55195 (October 23, 1991), President Bush directed agencies to use ADR in civil litigation whenever possible.

[14] Public Law 101–648, section 2, 104 Stat. 4969 (1990).

[15] 5 U.S.C. 563(a)

[16] Exchange Act Release No. 29284, 56 FR 27548 (June 14, 1991).

increased and an ADR proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full public record of the proceeding is important, and an ADR proceeding cannot provide such a record; and

(6) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and an ADR proceeding would interfere with the agency's fulfilling that requirement.[17]

With respect to reg-neg, such procedures may be appropriate when they can: (1) Reduce time and resources expended on developing and enforcing rules; (2) increase compliance rates; (3) provide expertise and information needed or desired to obtain better rules; or (4) reduce the likelihood of litigation over the rule. However, the Reg-Neg Act provides that agencies should consider reg-neg only if the head of the agency determines that it is in the public interest. In making such determinations, the Act directs the head of the agency to consider whether:

(1) There is a need for a rule;

(2) There are a limited number of identifiable interests that will be significantly affected by the rule;

(3) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who

(A) Can adequately represent the interests identified under paragraph (2); and

(B) Are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(6) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.[18]

4. There are a number of informal procedures generally followed by the staff which are not undertaken pursuant to formal authority.[19] For example, the staff may engage in discussions with interested parties in administrative proceedings to reconcile divergent views and attempt to narrow the issues to be considered in the proceeding.[20] In addition, the Commission's Rules of Practice provide a procedure by which parties may make, and the Commission consider, offers of settlement; by which agreements on procedure may be entered into; and by which conferences may be convened, in any proceedings before the Commission, including hearings before administrative law judges.[21] The staff also may discuss with interested parties in investigations, civil lawsuits, and administrative proceedings, the possibility of disposing of such matters by consent, settlement, or some other manner.[22] Thus, procedures similar to ADR and having the same goal of informal dispute resolution are currently in operation and provide a basis for further ADR development. Commenters may wish to suggest ways in which these procedures could be speeded up, be less expensive, encourage greater compliance or be otherwise improved.

5. Finally, the Commission recognizes that the following discussion does not cover all of its activities. By focusing on certain areas, it is not intended to exclude others. Commenters should feel free to suggest additional areas that may be appropriate for ADR.

B. Rulemaking

A few general notes concerning the Commission's rulemaking process, which apply regardless of the division or office to whose activities the rules relate, may prove helpful to commenters. Commission rulemaking involves, first, research by the staff of the matter under consideration and information gathering regarding the nature of the problem and various means to address it. Then, a proposed rule and accompanying explanatory release is drafted by the staff for the Commission. If the Commission votes to accept the staff's proposal, with or without modification, generally the proposed rule and release are published for public comment. After the close of the public comment period, the staff prepares an adopting release, which frequently contains a revised version of the rule that takes into account comments received as well as any new considerations that have arisen. Alternatively, the staff may recommend that the rule be reproposed if substantial changes have been made as a result of public comments or additional study. Finally, the Commission votes on the rule, and if adopted, it is published along with the final release.

Depending upon the nature of the particular rulemaking, the process outlined above may be modified in order to make it more fruitful. In particular, various alternative means of obtaining public comment may be used, such as holding hearings or issuing a concept release to gain public input prior to formulating specific proposals, or reproposing rules to gain additional comments. Some rules benefit from discussions with or grow out of proposals submitted by affected parties either informally or in rulemaking petitions.

With respect to the Commission's rulemaking function, comment is solicited as to whether a form of reg-neg would provide a better means of receiving and using public input. As noted above, the Commission currently engages in a variety of techniques to ascertain the views of the public in connection with rulemaking proceedings. Public comments are received at various stages of the process and are carefully considered. Few of the Commission's rules have been the subject of litigation. Comment is requested on how reg-neg might increase compliance with resulting rules.

There are a number of potentially interested persons to any Commission rulemaking. For example, interested persons may include many different types of registrants, underwriters, broker-dealers, attorneys, accountants, other professionals, institutional investors, individual investors, the securities bar, the securities industry, the accounting profession, corporations, and trade or public interest groups. Among these categories of interested persons, wide differences in interest may exist. Depending upon the nature of the particular prospective rule or regulation, reg-neg would have to take many or all of these interests into

[17] 5 U.S.C. 572(b).

[18] 5 U.S.C. 563(a).

[19] See, e.g., 17 CFR 202.1—8. In addition, the Commission's programs generally are administered by delegated authority to the staff. See 15 U.S.C. 78d–1; 17 CFR 200.30–1—16. Interested persons may request review by the Commission of any staff action taken pursuant to delegated authority. 17 CFR 201.26. Certain staff members with decisionmaking responsibilities, as well as interested parties to Commission proceedings, are subject to regulations governing ex parte communications, which should be considered by commenters in making suggestions regarding the Commission's ADR policy. 17 CFR 200.110—114.

[20] 17 CFR 202.4(c).

[21] 17 CFR 201.8.

[22] 17 CFR 202.5(f). For more controversial issues that are addressed directly by the Commission, there is usually a need to establish precedent that can guide future staff actions taken pursuant to delegated authority.

account. Public comment is sought as to when reg-neg should be an available option, how such a process should be implemented, and whether there are particular areas of rulemaking that would be enhanced by this approach.

C. Summary of Commission Activities

1. Division of Corporation Finance

The Division of corporation fiance reviews registration statements, annual and other reports, proxy materials, tender offer documents, and other disclosure documents to assure that the disclosure and other requirements of the Securities Act of 1933 (the "Securities Act"),[23] the Securities Exchange Act of 1934 (the "Exchange Act"),[24] and the Trust Indenture Act of 1939 (the "Trust Indenture Act"),[25] are met. The staff of the Division is responsible for determining whether business and financial disclosure in filed documents is adequate to protect investors and in compliance with Commission rules, whether other aspects of corporate and securities transactions are in compliance with applicable requirements, and whether other applicable requirements, such as accounting standards, are satisfied.

Certain filings may be the subject of staff action pursuant to authority delegated from the Commission.[26] Such actions include acceleration of the effectiveness of a registration statement[27] and acceleration of the time period during which proxy materials must be on file with the Commission before they may be mailed.[28]

The staff treats deficient filings in a variety of ways, depending upon the particular transaction involved and the nature of the noncompliance. Frequently, the staff issues comments to the party responsible for the filing so that the deficiency may be rectified by that party. If this approach is not successful or feasible, the staff may pursue other alternatives, including recommending a course of action to the Commission. Such recommendations may be to refuse to accelerate the effectiveness of, or to issue a stop order on, a registration statement,[29] commence an informal inquiry, or to institute a formal order of investigation or some type of enforcement action.

In addition to reviewing filings, the staff reviews applications filed by companies and investors and may issue certain orders pursuant to delegated authority.[30] For example, the staff may issue orders with respect to applications for exemptions from certain registration and reporting requirements of the Exchange Act, applications for confidential treatment, and various applications under the Trust Indenture Act. Some of these matters require public notice and the opportunity for public comment before an order can be issued, while others do not. Alternatively, the staff may prepare orders for issuance by the Commission.

The staff also renders advice and assistance to registrants, prospective registrants, other filers, accountants, attorneys, and other members of the public. Depending upon the nature of the question and the extent to which informality is appropriate, this may be accomplished through telephone calls, interpretive or no-action letters, or pre-filing conferences or other meetings.

Finally, like the other operating divisions of the Commission, the Division of Corporation Finance participates in the rulemaking process with respect to rules, regulations, forms and schedules.

Comment is solicited as to whether a form of ADR or reg-neg would be useful as a method of resolving disputes with respect to any of the activities described above: Review of filings, processing of applications, rendering of interpretive advice, and rulemaking. The review of filings, processing of applications, and rendering of advice are characterized by informality and direct contact between the staff and other parties, including the opportunity for parties to explain their views before decisions are made. Even after decisions are made, there are ample opportunities for reconsideration and appeal to the Commission. Comment is solicited as to whether any means of ADR would be likely to provide a less expensive or more useful, speedy, or consistent resolution of these matters, or otherwise improve upon them.

2. Division of Enforcement

a. General responsibilities. The Division of Enforcement is charged with carrying out the Commission's responsibility to enforce the federal securities laws. It conducts informal and formal investigations into possible violations and recommends appropriate actions and remedies for consideration by the Commission.[31] In informal investigations, unlike formal investigations, no compulsory process is issued or testimony compelled, and cooperation is voluntary. Unless otherwise ordered by the Commission, investigations and reports on investigations are non-public. At the conclusion of an investigation or otherwise, the Commission may determine that no action is warranted, or, upon the staff's recommendation, the Commission may authorize the staff to proceed with one or more of the following:

(1) An action in federal court seeking an injunction to prevent further violative conduct, which may also seek additional relief such as the imposition of penalties or the disgorgement of illegal profits;

(2) Administrative proceedings; or

(3) Referral to the Department of Justice for criminal prosecution.[32]

The Commission provides a procedure, usually referred to as a "Wells Submission," by which a person, who has been advised by the enforcement staff that he or she may be the subject of a recommendation by the staff to the Commission that law enforcement action be taken, may submit a written statement to the Division explaining why no enforcement action should be brought against him or her.[33] During the course of the staff's investigation or, more typically, toward its conclusion, the staff ordinarily, but not as a matter of right, advises counsel, if the staff has come to a determination to recommend to the Commission that a law enforcement proceeding be instituted, that counsel may make a written submission on behalf of the client. The staff describes to counsel in general terms the results of its investigation and the nature of the charges it intends to recommend to the Commission. Counsel may choose to make a submission in an attempt to dissuade the staff from going forward with an enforcement recommendation to the Commission, or, should that provide unsuccessful, to persuade the Commission that the staff's adverse recommendation is inappropriate.[34] The staff forwards the Wells Submission to the Commissioners in conjunction with its own memorandum recommending the enforcement action and usually

[23] 15 U.S.C. 77a *et seq.*

[24] 15 U.S.C. 78a *et seq.*

[25] 15 U.S.C. 77aaa *et seq.*

[26] See 17 CFR 200.30–1.

[27] 17 CFR 230.461.

[28] 17 CFR 240.14a–6.

[29] See section 8 of the Securities Act, 15 U.S.C. 77h.

[30] See 17 CFR 200.30–1.

[31] The Commission's informal enforcement procedures and its Rules Relating to Investigations are set forth at 17 CFR 202.5 and 17 CFR 203.1–8, respectively.

[32] Other recommendations may be made, such as, for example, to suspend trading in a security.

[33] The Wells Submission procedure is set forth at 17 CFR 202.5(c).

[34] Counsel sometimes elects to submit suggestions in Wells Submissions as to how the proceedings might be settled.

responding to the points raised by counsel.

In general, there are three broad areas in which disputes arise in connection with the Commission's enforcement program. These are: (a) The investigative process; (b) the prosecution of administrative proceedings before the Commission and enforcement litigation before the courts; and (c) requests for relief from administrative and judicial orders. Within each of these broad categories, a variety of disputes may arise. Each type of dispute implicates different interests and, accordingly, may require different treatment under the Commission's ADR policy.

b. The Investigation Process. Most of the disputes arising out of investigations relate to the process by which the staff gathers information. These principally concern compliance with Commission subpoenas for documents or testimony, and may involve a wide range of issues. Such issues include the cost of complying with subpoenas, the scope of a subpoena, the timing of production, the appearance of the witness, the existence of a privilege, and the confidentiality of documents and testimony submitted.

Such disputes typically are resolved in one of three ways: the investigative staff may seek authority from the Commission to bring a subpoena enforcement action; the staff may negotiate a compromise with respect to the scope or timing of production; or the staff may simply hold in abeyance the request for information. The staff, therefore, employs a method of ADR when it negotiates a resolution of a dispute relating to the investigative process. Under present practice, however, this negotiation process is informal and seldom protracted because extended negotiations on such matters simply delay investigations.

One area of dispute in the investigative process concerns the cost of complying with subpoenas. These disputes include whether the Commission must reimburse a recipient of an investigative subpoena, and, if so, what reimbursement is due. As a matter of policy, the Commission ordinarily does not reimburse recipients of subpoena for their search and copying costs without a court order.[35]

Another area of potential disputes, although infrequent, relates to access to transcripts. Witnesses have a qualified right to review their own documentary and testimonial evidence.[36] The Commission has the authority, for good cause shown, to refuse to allow a witness to obtain a copy of a transcript or documentary evidence. The courts have denied interlocutory review of a refusal to provide a witness a copy of his testimony.[37]

Requests for confidentiality of testimony or documents, and requests for access to investigative files, may also give rise to disputes. In addition, subpoena recipients may ask that the staff accept limited access to documents, such as accepting redacted documents subject to inspection of the originals, examining originals and retaining copies only of important documents, or agreeing to return originals following the conclusion of an investigation. Occasionally, the staff will negotiate limited access agreements of this nature. Confidentiality disputes may also arise through Freedom of Information Act ("FOIA") requests or through subpoenas issued in connection with private litigation. Ultimately, the Office of General Counsel represents the Commission with respect to FOIA requests and subpoenas.[38]

c. Enforcement proceedings. Once the Commission authorizes the staff to initiate enforcement proceedings, a variety of disputes typically arise both before and after the filing of the action. Prior to filing an action, disputes may arise concerning the forum—administrative or judicial—in which the action is to be brought, the number and scope of the charges, and the nature of the remedies sought by the Commission. Negotiations often occur with regard to such disputes. Once administrative or judicial proceedings commence, some or all of these pre-filing disputes may continue, as may the negotiations pertaining to them.

In addition, disputes concerning discovery or evidentiary issues may also arise. Such disputes may be resolved as an adjunct to resolving the entire action. When they are resolved separately, the negotiation process is analogous to the process of negotiating subpoenas during the investigative phase. Rather than seeking judicial resolution of these disputes through the subpoena enforcement process, the staff may seek to resolve litigation disputes through discovery motions if negotiations among counsel prove fruitless.

In the past, the Commission has litigated a number of civil cases in federal court because the defendant and the Commission concurred on the issues of liability but disagreed about the appropriate relief. As disgorgement and penalties may now be obtained in administrative proceedings as a result of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (the "Remedies Act"),[39] a similar situation may occur in administrative actions. Often these cases involve a need to evaluate the ability of the defendant or respondent to pay. Delay in the settlement process may reduce a defendant's assets through costs and counsel fees. Accordingly, in cases where the principal dispute involves the amount of disgorgement or penalties and/or the ability to pay, a method of ADR may provide an expeditious means of settling the matter.

d. Requests for relief from orders. The final area in which disputes arise concerns requests for relief from Commission bar orders entered in administrative proceedings and from injunctions and ancillary relief ordered by a court. The Commission has authority to institute administrative proceedings against persons who are associated or seek association with regulated entities and have engaged in certain acts or omissions or omissions or are subject to certain convictions or injunctions, and bar such persons from being so associated.[40] In addition, self-regulatory organizations ("SROs") such as the securities exchanges and the National Association of Securities Dealers, Inc. can bar persons subject to certain "statutory disqualifications"

[35] To obtain such an order, the recipient of a subpoena must refuse to produce under the subpoena and seek an order for reimbursement in a subpoena enforcement action brought by the Commission. The Right to Financial Privacy Act provides for a statutory right to reimbursement. Because the reimbursement rate for copying and research time are specified by regulation, there are rarely reimbursement disputes relating to such subpoenas. Only if an agency subpoena is unduly burdensome, and compliance would "threaten normal operation of a respondent's business," will a court refuse to enforce a subpoena unless the agency provides reasonable reimbursement. *EEOC* versus *Bay Shipbuilding Corp.*, 668 F.2d 304, 313 & n. 11 (7th Cir. 1981); *FTC* versus Rockefeller, 591 F.2d 182, 191 (2d Cir. 1979); *SEC* versus *Arthur Young & Co.*, 584 F.2d 1018, 1032–33 (D.C. cir. 1976), *cert. denied*, 439 U.S. 1071 (1979).

[36] See Rule 6 of the Rules Governing Investigations, 17 CFR 203.6.

[37] See, e.g., *Banes, et al.* versus *SEC*, No. 91–790272 (9th Cir. July 15, 1991) (per curiam); *Commercial Capital Corp.* versus *SEC*, 360 F.2d 856, 858 (7th Cir. 1966).

[38] While investigations are ongoing, the Commission typically declines to produce documents from its investigative files. In responding to FOIA requests, the Commission generally relies on an exemption in the statute for documents from law enforcement investigative records. In responding to subpoenas, it relies on a governmental privilege. The Commission rarely compromises such claims out of concern for harm to its investigations or unwarranted invasion of the privacy of third parties.

[39] Pub. L. 101–429, 104 Stat. 931.

[40] Exchange Act sections 19(h), 15 U.S.C. 78s(h), 15(b)(6), 15 U.S.C. 780(b)(6), and 15B(c)(4), 15 U.S.C. 780–4(c)(4); Investment Advisers Act of 1940 sections 203(f), 15 U.S.C. 80b–3(f); Investment Company Act of 1940 sections 9(b), 15 U.S.C. 80a–9(b).

from association with a member of the SRO.[41]

Persons barred by the Commission or an SRO, or otherwise subject to a "statutory disqualification," cannot associate with a regulated entity or SRO unless the consent of the Commission and SRO are obtained. There are two ways in which such persons may obtain such consent. Pursuant to Rule 29 of the Commission's Rules of Practice,[42] persons subject to a Commission bar, who are seeking to associate with an entity that is not a member of an SRO or whose bar order contains a proviso that application may be made to the Commission after a specified period of time,[43] may make an application directly to the Commission for consent to associate. All other such persons must make their application pursuant to Rule 19h–1 of the Exchange Act,[44] by which applications for consent to associate are made with the assistance of the prospective employer through the employer's SRO, and the Commission reviews SRO determinations on such applications. Under either method, Commission approval of an application for consent to associate does not modify or vacate the Commission order nor does it remove or lift the bar; the order and bar remain in effect, so that a person who deviates from the terms or conditions under which his or her application was approved is subject to an enforcement action for violation of the order.

By delegated authority, the Director of the Division of Enforcement reviews applications made pursuant to Rule 29 and the Director of the Division of Market Regulation reviews applications made pursuant to Rule 19h–1. Although the Division of Enforcement sometimes engages in negotiations concerning some issue with parties seeking consent to associate under Rule 29, the Division of Market Regulation does not engage in such negotiations with applicants seeking consent to associate under Rule 19h–1. In the latter case, the Division of Market Regulation consults solely with the applicable SRO that has made an initial determination with respect to the application.

As to Rule 29 applications, the Commission has consented in the past to relief from bars when it has been in the public interest. The Rule sets forth eight factors that the applicant must address in an affidavit. Grants of such applications sometimes follow negotiations between the staff and the applicant concerning the nature of the duties the applicant would have and the extent of supervision that a new employer would provide if the applicant were to re-enter the business. Applications to re-enter the securities industry by barred persons are common, and are often granted subject to limitations on a person's activities. In cases where there has been a preliminary determination to grant some form of relief from an order, ADR may be helpful in reaching an acceptable order.

Relief also may be sought from administrative cease-and-desist orders. However, as cease-and-desist authority has only recently been granted to the Commission pursuant to the Remedies Act, there has not yet been an application for relief from such an order.

Finally, relief may be sought from injunctions and other ancillary relief ordered in connection with an injunction.[45] In exceptional cases, an injunction may be modified or dissolved by the court on motion by the defendant or by the Commission under Federal Rule of Civil Procedure 60(b). Almost always, a party seeking modification or dissolution of a court decree entered in a Commission action will seek to negotiate with the staff before making the motion in court. A strict standard governs requests to modify or dissolve Commission injunctions: "Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions" will justify relief from an injunctive order.[46] The Commission has successfully relied on this standard to defend its injunctions. While the Commission sometimes will agree not to object to a motion to modify or vacate a portion of a court decree directing ancillary relief, such as mandatory compliance procedures, it seldom will agree to relief from "obey the law" injunctions.[47] Similarly, there are occasions when the Commission consents to relieve a party from certain provisions of an injunction, but only in truly exceptional cases involving a change in circumstances.

In cases involving relief from bar orders and injunctions, the principal dispute relates to the nature of the limitations under which a defendant will operate. The negotiation process under Rule 29 in cases involving re-entry of a barred person usually turns on finding a combination of limitations that gives the Commission sufficient comfort that the person will be working in a position and under supervision that minimizes the risk of future violations. In the case of modifications to an injunction, negotiations typically turn on whether the staff and the defendant are able to devise a substitute court order that preserves the Commission's enforcement interest in protecting the public yet interferes less with the operation of a defendant's business.

e. Considerations as to ADR. The Commission currently settles more than 80% of its enforcement cases. The Commission requests comments as to whether there are ADR techniques that would achieve settlements that are "better" from the viewpoint of the Commission enforcement program or the public interest with respect to result, timeliness, cost, or compliance.

The investigation of potential violations of the federal securities laws and the prosecution of those matters through judicial and administrative proceedings are essential parts of the Commission's statutory obligations. To assist in carrying out these responsibilities, the Commission has a powerful weapon for fact-finding that is not possessed by private parties, the subpoena, compliance with which can be enforced in court. In addition, the present negotiation and litigation processes are often used by the Commission not only to resolve particular cases but also to achieve, in the words of the ADR Act, a "definitive or authoritative resolution of the matter * * * for precedential value." Unlike private litigants, the Commission engages in litigation or negotiation to promote the public interest. Decisions to institute certain actions, charge certain offenses, and request certain remedies may, for example, reflect a need in a certain case to reinforce the Commission's commitment to enforce particular provisions of the securities laws.

[41] Exchange Act sections 6(c)(2), 15 U.S.C. 78f(c)(2), 15A(g)(2), 15 U.S.C. 78o–3(g)(2), 17A(b)(4)(A), 15 U.S.C. 781q–1(b)(4)(A).

[42] 17 CFR 201.29. For a discussion of Rule 29, see Exchange Act Release No. 20783, [1983–84 Transfer Binder] Fed. Sec. L. Rep. (CCH), ¶ 83,509 (March 22, 1984).

[43] Persons whose order contains such a proviso and who seek to associate with a broker-dealer, may elect either to apply directly to the Commission under Rule 29 and, if the Commission approves the application, thereafter to the SRO, or to have the prospective employer apply to the SRO, subject to Commission review under Exchange Act Rule 19h–1 (discussed below in Section III.C.4. of this Release).

[44] 17 CFR 240.19h–1.

[45] These cases are handled by the Office of General Counsel and are discussed further in Section III.C.9.b.ix. of this Release.

[46] *United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932). See also, *SEC* v. *Blinder, Robinson & Co.*, 855 F.2d 677, 679–80 (10th Cir. 1988); *SEC* v. *Clifton*, 700 F.2d 744, 745 (D.C. Cir. 1983).

[47] Typically, the Commission consents to relieve a person from an injunction only where some form of ancillary relief (e.g., compliance procedures) was obtained and the Commission believes that the ancillary relief is no longer necessary.

In cases where the Commission negotiates or settles, it does so only where the resolution will not undercut its interpretation of the securities laws, its need to maintain consistency of results among cases, and its protection of the public interest. When the Commission decides to litigate matters, it typically does so to establish precedent or because the staff cannot achieve a settled result that the Commission deems consistent with the public interest or its prior interpretations of the securities laws. Commenters are requested to address whether and how ADR can be utilized to achieve the foregoing goals of interpretation and enforcement of the securities laws to establish precedent, deterrence, consistency, and to promote the public interest.[48]

ADR may not be well-adapted to subpoena negotiations, as it may delay rather than hasten the process. Where the Commission does compromise on production issues, it is typically done informally and quickly. Selecting, organizing, and employing an ADR technique could postpone the resolution date. ADR may be inappropriate in cases where, by statute, the Commission must act in a very brief period, such as when it is necessary to apply to a court promptly to obtain a temporary restraining order, freeze, or cease and desist order.

The Commission has not delegated to its staff the authority to institute court or administrative proceedings or to settle them; the Commissioners themselves vote to authorize such matters. Comment is solicited as to whether forms of ADR would be useful which do not require the direct participation of persons with authority to settle, but where it is sufficient that the staff assigned to a case have authority only to recommend a negotiated settlement for acceptance by the Commission.[49] If a proposed procedure, to be effective, depended upon direct negotiations between persons with authority to settle the matter, this would require the Commission to delegate to one person the power to settle a case submitted to ADR. Such a procedure would not be desirable or feasible for the Commission.

3. Division of Investment Management

The Division of Investment Management administers the Investment Company Act of 1940 ("Investment Company Act"),[50] the Investment Advisers Act of 1940 ("Advisers Act"),[51] and the Public Utility Holding Company Act of 1935 ("Holding Company Act").[52] Among other things, these Acts provide the Commission with authority to grant exemptions from or issue orders under provisions of the Acts if the Commission makes certain required findings.[53] In many cases this authority has been delegated to the Director of the Division. The Acts require that orders of the Commission shall issue only after notice and opportunity for a hearing.[54]

Most of the orders issued under the Investment Company Act and Advisers Act are granted upon requests for exemptions from various provisions of the Acts or Commission rules. Generally, requests for orders are discussed by the staff with applicants prior to publication of a notice. If the staff could support an application if it was modified, the applicant receives comments and often revises its request to take into account the staff's comments. As a result of these informal negotiations, almost all requests for orders are either granted without a hearing or withdrawn when the staff notifies the applicant that it will not support the application. Occasionally, persons requesting a Commission order that is not supported by the staff do not withdraw their application and the matter proceeds to a Commission hearing. In addition, persons affected by an application that has been noticed may request a hearing. If ordered by the Commission, the hearing is held before a Commission-appointed hearing officer, and appeals are made directly to the Commission.

Comment is requested as to whether a form of ADR would be useful in resolving disagreements over whether the Commission should grant an order under the Acts. How would findings, which the Acts require the Commission to make before granting an order, be made if ADR is employed? How would the Commission identify interested persons who might request a hearing on an application?

Under the Investment Company Act, the Commission has the authority to bar persons from being employed with or serving in certain capacities for an investment company,[55] and to permit persons to serve who, by statute, are prohibited from serving in these capacities.[56] In addition, as noted in the discussion of the activities of the Division of Enforcement,[57] the Commission has authority to issue money penalties in administrative proceedings[58] and cease and desist orders against certain persons associated with an investment company violating the Investment Company Act or other securities laws.[59] Under the Advisers Act, the Commission can deny, suspend, or revoke the registration of an investment adviser or persons associated with an adviser,[60] censure them,[61] and issue cease and desist orders.[62] In addition, the Commission has authority to impose money penalties in administrative proceedings for violations of the Advisers Act or rules adopted under the Act.[63] This authority is very similar to Commission authority under the Exchange Act with respect to broker-dealers.

The Commission has extensive rulemaking authority under all three

[48] As previously noted is Section III.A.3. of this Release, the ADR Act directs agencies to consider not using ADR where, among other things, "a definitive or authoritative resolution of the matter is required for precedential value," "maintaining established policies is of special importance, so that variations among individual decisions are not increased," or "the matter significantly affects persons or organizations who are not parties to the proceeding." 5 U.S.C. 572(b). In most litigated enforcement matters, at least one of these considerations applies. This provision of the Act also contains other factors that may indicate that ADR is inappropriate in certain cases. Commenters should address all of the factors that the ADR Act sets forth as potential reasons for not using ADR.

[49] Once the Commission has authorized the institution of a court or administrative proceeding, it is understood to have delegated to the staff the authority to make intermediate determinating during the course of the case or proceeding, e.g., evidence, witnesses, discovery, etc. Subpoena enforcement proceedings must be authorized by the Commission.

[50] 15 U.S.C. 80a–1 et seq.

[51] 15 U.S.C. 80b–1 et seq.

[52] 15 U.S.C. 79a et seq.

[53] General exemptive authority is granted the Commission by Sections 6 (b), (c), (d), and (e) of the Investment Company Act and Section 206A of the Advisers Act. 15 U.S.C. 80a–6 (b), (c), (d), and (e); 15 U.S.C. 80b–6a. The Investment Company Act gives the Commission authority to issue orders for different types of relief from a number of specific statutory requirements of the Investment Company Act. Specific grants of authority to issue orders under the Advisers Act are also provided the Commission by sections 202(a)(11)(F), 203(f), and 203(h). 15 U.S.C. 80b–2(a)(11)(F), 80b–3(f), 80b–3(h). There are numerous provisions throughout the Holding Company Act giving the Commission the authority to issue orders. See U.S.C. 79–79z–6.

[54] Section 40(a) of the Investment Company Act, 15 U.S.C. 80a–39(a); section 211(c) of the Advisers Act, 15 U.S.C. 80b–11(c); section 20(c) of the Holding Company Act, 15 U.S.C. 79t(c).

[55] Section 9(c) of the Investment Company Act, 15 U.S.C. 80a–9(c).

[56] Section 9(b) of the Investment Company Act, 15 U.S.C. 80A–9(b).

[57] See *supra* Section III.C.2 of this Release.

[58] Section 9(d) of the Investment Company Act, 15 U.S.C. 80a–9(d).

[59] Section 9(f) of the Investment Company Act, 15 U.S.C. 80a–9(f).

[60] Section 203(e) of the Advisers Act, 15 U.S.C. 80b–3(e).

[61] *Id.*

[62] Section 203(k) of the Advisers Act, 15 U.S.C. 80b–3(k).

[63] Section 203(i) of the Advisers Act, 15 U.S C. 80b–3(i).

statutes.[64] In some cases, rulemaking proposals seek to codify a series of exemptive orders issued after negotiations with applicants as described above. Comment is requested as to what additional use may be made of negotiated rulemaking techniques.

4. Division of Market Regulation

The Commission's program for the regulation and supervision of securities markets and market participants is governed by the Exchange Act. In administering those provisions, the Commission, through the Division of Market Regulation, engages in various formal and informal administrative actions, including rulemaking, registration of market participants and SROs, approval of SRO proposed rule changes, issuance of orders exempting persons or transactions from provisions of the Exchange Act and the rules thereunder, providing interpretive advice, approval of applications for listing and delisting of securities on exchanges, and review of SRO decisions to permit persons who are subject to "statutory disqualifications" to associate with broker-dealers.[65]

The Commission solicits comment on the advisability of utilizing ADR procedures and reg-neg in connection with its administration of the market regulation provisions of the Exchange Act. There is substantial competition in the areas regulated through the market regulation program, and, accordingly, actions in one matter affect parties not represented in the matter who are competitors of the affected party. For example, the Commission has considered SRO proposed rules that would limit the ability of its members to engage in transactions in another market operated by another SRO (thereby limiting the potential market share of the other SRO). The Commission has available substantial information about the interests of markets and market participants through SROs and from other sources. In addition, all rulemaking in the market regulation program, including those that have been challenged in court, has afforded substantial opportunity for private sector input. Each rulemaking has been characterized by the expression of strong divergent views by different private sector interests. In each case, the Commission has made a principled policy decision, which it advocates to the Congress as well as to the courts. Moreover, consideration should be given to the need to make consistent decision and to balance burdens on competition with investor protection and other statutory goals.

5. Office of the Administrative Law Judges

The Commission administers six statutes—the Securities Act, Exchange Act, Investment Company Act, Advisers Act, Holding Company Act, and Trust Indenture Act—which provide for administrative proceedings pursuant to provisions of the Administrative Procedure Act (APA).[66] Administrative Law Judges (ALJs) preside over public on-the-record hearings required by the APA in administrative proceedings initiated by the Commission on the recommendation of one of its offices or divisions. Such proceedings may result in the setting of Commission policy.

A variety of cases result in administrative proceedings. The typical cases concern whether the Commission should censure, limit the activities of, or suspend or bar from the securities business, registered broker-dealers or investment advisers and persons affiliated with those entities, and whether persons appearing or practicing before the Commission in a representative capacity (lawyers and accountants, for the most part) should be suspended or barred from such practice because of improper professional conduct or judicial actions taken against them.

The Administrative Procedures Act applies when the Commission initiates an administrative proceeding. The Chief ALJ, upon receipt of the Order Instituting Public Proceedings, assigns the case to an ALJ and sets a date, time, and place for the public hearing. The parties may request that the judge postpone the start of the hearing while they explore the possibility of a negotiated settlement. Sometimes the parties request time to explore settlement during the hearing after the prosecuting division or office has presented its evidence.

The Commission's ALJs can be involved in ADR-like procedures because Rule 8 of the Commission's Rules of Practice[67] provides for conferences in which the parties can discuss settlement. The parties may request the judge to participate in the settlement process by opining on the appropriateness of a proposed settlement, with the understanding that the parties' request constitutes a waiver of any right to claim pre-judgment based on the views expressed. The judge may decline to express a view on an offer. To date, this aspect of Rule 8 has had limited use.

Comments are solicited on the appropriateness of ADR in administrative proceedings. The Commission solicits comment on whether it would be useful to institute a modified Rule 8 procedure whereby a second judge, not the one assigned to the proceeding, would act as settlement judge and convene an informal conference at the parties' request and pursue the possibility of settlement. Should the Commission direct the ALJs to stress to the parties the benefits of a negotiated resolution, explore the possibilities of various ADR techniques with the parties, or even require a statement from the parties that they have tried ADR and a settlement is not possible? There are other ADR procedures that may be useful in this adjudicatory role. Many courts have adopted ADR procedures and others are considering them. Would use of ADR require the Commission to establish procedures for it to either accept/reject the negotiated result or delegate to the staff negotiators authority to settle on behalf of the Commission?

6. Office of the Chief Accountant

The Office of the Chief Accountant (OCA) participates in the Commission's programs for the review of registration statements and reports, enforcement of the securities laws, oversight of the accounting profession, and rulemaking.

At present, OCA engages in a form of reg-neg through its oversight and review programs. OCA's oversight objectives result in periodic meetings with, among others: The staff of the Financial Accounting Standards Board (FASB); various committees of the American Institute of Certified Public Accountants, including the Planning Subcommittee of the Auditing Standards Board, the SEC Regulations Committee, and the Accounting Standards Executive Committee; the Financial Executives Institute (FEI); and representatives of various accounting firms. Also, the Commission's Chief Accountant serves as a non-voting participant on the FASB's Emerging Issues Task Force (EITF), which includes representatives of large, medium, and small accounting firms,

[64] General rulemaking authority is granted the Commission by sections 6(c) and 38(a) of the Investment Company Act, 15 U.S.C. 80a–6(c) and 80a–37(a), sections 206A and 211 of the Advisers Act, 15 U.S.C. 80b–6a and 80b–11, and section 20(a) of the Holding Company Act, 15 U.S.C. 79t(a).

[65] As discussed above in Section III.C.2. of this Release, the Division of Market Regulation, by delegated authority, reviews applications to associate with broker-dealers made pursuant to Exchange Act Rule 19h–1. As noted in that Section, the Division of Market Regulation does not engage in direct negotiations with applicants, but rather consults with the SRO that has made an initial determination with respect to the application.

[66] 5 U.S.C. 551 et seq.

[67] 17 CFR 201.8.

corporations and affiliated organizations (such as the National Association of Accountants, FEI, and the Business Roundtable), and the FASB staff. The EITF discusses novel and difficult accounting issues and indicates when there is a consensus on the appropriate accounting for a transaction. Discussions at the EITF and in the periodic oversight meetings described above, aid OCA in understanding interested parties' views on current or recurring issues in advance of drafting interpretive bulletins or proposing rulemaking.

OCA participates in the review of registrant filings. Responses to OCA comments on individual filings may highlight registrant positions in areas that require additional interpretive guidance or rulemaking.

OCA participates in the Commission's general enforcement program by providing expert advice on accounting and auditing issues to the Division of Enforcement and the Office of General Counsel. In addition, OCA is the complainant in disciplinary actions against accountants and their firms brought under Rule 2(e) of the Commission's Rules of Practice,[68] in which it is represented by the Office of General Counsel.

Comment is solicited as to whether a form of ADR or reg-neg would be useful with respect to any OCA's activities described above: oversight of the accounting profession, review of filings, rendering interpretive advice, enforcement related activities, and rulemaking. The review of filings, oversight of the accounting profession, rulemaking, and rendering of advice generally follow direct contact between the staff and other parties as described above, including the opportunity for parties to explain their views before decisions are made. Even after decisions are made, there are ample opportunities for reconsideration and appeal to the Commission. Comment is solicited as to whether a form of ADR or reg-neg would be likely to provide a less expensive or more useful, speedy or consistent means of resolving these matters or would provide a better means of receiving and utilizing public input.

7. Office of Equal Employment Opportunity

The Equal Employment Opportunity Director administers the EEO complaint process, which consists of three major stages: the pre-complaint counseling stage, the formal complaint stage, and the appellate stage. The Equal Employment Opportunity Commission has adopted a new complaints processing regulation that sets forth policies and procedures on filing, processing, investigating, and settling complaints of discrimination.[69] Among other things, the new procedures significantly expand the counseling period and provide substantial flexibility in the formal complaint stage for fact-finding and resolving disputes.

Pre-complaint counseling is a prerequisite to filing a formal complaint of employment discrimination in the federal government. The complainant must seek EEO counseling from a designated EEO Counselor within 45 calendar days of the alleged discriminatory event or action. The EEO Counselor will then conduct the initial interview with the complainant, make whatever informal inquiry into the matter is appropriate, and attempt to bring the parties together into an amicable informal resolution.

Following counseling, the complainant is free to file a formal complaint. The complaint is assigned to an EEO Investigator. The Commission engages investigators to ensure the neutrality of the investigation file. After the investigation, the complainant is given an opportunity to discuss the findings in an attempt to resolve the matter informally. If this is not successful, the complainant may elect to have a hearing and/or a final agency decision.

If there is no resolution of the matter and if the complainant disagrees with the final agency decision on his complaint, that person may appeal to the Equal Employment Opportunity Commission and/or federal district court.

Utilization of ADR procedures may be useful in resolving EEO disputes at any stage of the administrative process, including the appellate stage. The Commission solicits comment on the utility of ADR in EEO disputes. Would ADR work within the scope of the EEO process? As a separate process?

8. Office of the Executive Director

The Executive Director is responsible for the development and execution of the overall management policies of the Commission for all its operating divisions and staff offices. The Executive Director also provides executive direction to, and exercises administrative control over, the Office of Equal Employment Opportunity, Office of Filing Information and Consumer Services, Office of the Comptroller, Office of Information Technology, Office of Human Resources Management, Office of Public Affairs, and Office of Administrative Services.

In addition, the Executive Director is delegated the full range of program administrative functions for the purposes of implementing the Paperwork Reduction Act, the Small and Disadvantaged Business Utilization Program, Government Printing and Binding Regulations, the Occupational Safety and Health Program, the Federal Managers Financial Integrity Act of 1982, as well as others designated by the Chairman.

The Executive Director also exercises delegated authority to designate certifying officers for agency payments, prescribe procurement regulations, enter into contracts, designate contracting officers, and make procurement determinations.

Contracting may be a potential area for ADR. The process for contract disputes, under the Federal Acquisition Regulations, is as follows. First, a contractor submits, in writing to the Contracting Officer (C.O.), a claim seeking payment of money, adjustment or interpretation of contract terms, or other relief arising under the contract. Second, the C.O. issues a written decision on any claim initiated against the contractor. Third, when a claim cannot be settled by mutual agreement and a decision on the claim is necessary, the C.O. reviews facts pertinent to the claim, secures legal and other assistance, and prepares a written decision. Finally, the C.O. advises the contractor that he may appeal the C.O.'s decision to the Board of Contract Appeals. During this process, it may be helpful to employ ADR when the claim cannot be settled by mutual agreement and a decision on the claim is necessary.

The Commission solicits comment as to the suitability of ADR procedures to personnel grievances and contract disputes, which have the potential to lead to litigation.

9. Office of the General Counsel

The Office of the General Counsel (OGC) serves as the focal point for representation of the Commission in all appellate litigation and litigation brought against the Commission, whether in connection with the securities laws or against the Commission or its staff.[70] OGC's duties

[68] 17 CFR 201.2(e). Rule 2(e) disciplinary actions are discussed below in Section III.C.9.b.v. of this Release.

[69] 29 CFR part 1614.

[70] The Division of Enforcement represents the Commission in law enforcement actions brought by the Commission in court and in administrative proceedings before the Commission. See *supra* Section III.C.2 of this Release. The Office of General

Continued

also include representing the Commission in judicial proceedings, helping to resolve cross-divisional legal matters, and providing advice and assistance to the Commission, its operating divisions, and regional offices.

a. Adjudication. The OGC Adjudication Group assists the Commission by preparing draft decisions in administrative proceedings on appeal from adjudicative actions taken by SROs and ALJs. Many of these cases involve disciplinary actions against regulated entities or securities professionals under the Exchange Act. Other cases include regulatory proceedings under the Public Utility Holding Company and Investment Company Acts, statutory disqualification proceedings and SRO membership denial proceedings under the Exchange Act, and stop-order proceedings under the Securities Act.

The various stages involved in these cases are summarized as follows. First, an appeal to the Commission is filed. Second, briefs are filed. Third, at the request of a party in an appeal from an ALJ's decision or in the discretion of the Commission in an appeal from an SRO's decision, oral argument before the Commission is held. Fourth, the staff analyzes the record on appeal and prepares a draft opinion for the Commission. Finally, the draft is submitted to the Commission and the Commission issues its decision.

The Commission solicits comments on whether ADR would be useful in resolving disputes at this appellate level. Should a procedure be established that would provide the parties with the opportunity to mediate the issues in controversy? Alternatively, should a procedure be adopted in which a neutral third party conducts a post-briefing conference to clarify the issues and positions, and if appropriate, receives supplementary briefs and expresses views about the perceived merits of each party's case? Would ADR interfere with the Commission's obligations to maintain continuing jurisdiction over a matter and alter disposition of the matter in light of changed circumstances?[71]

b. General litigation. The OGC General Litigation Group is involved in the activities described below. Some involve disputes that are quickly disposed of either in negotiations, administrative proceedings already subject to informal ADR procedures, or by filing motions in court. The Commission solicits comment on whether any of the following may be amendable to ADR procedures or whether existing informal ADR practices can be improved:

i. EAJA claims. These are claims in district courts against the Commission by defendants in law enforcement actions instituted by the Commission seeking attorney's fees pursuant to the Equal Access to Justice Act.[72] These cases usually proceed on a motion following an enforcement action in which the defendant that he has "substantially prevailed."[73] The amount of fees may be negotiated. These matters are decided as post-judgment motions, there is no discovery, and no complex procedures are involved.

ii. MSPB claims. These are appeals by Commission employees from job actions taken against them (e.g., removals, downgrades, furloughs, reductions in force, denials of within-grade increases, and suspensions of longer than 14 days). When an employee appeals the Commission's action to the Merit Systems Protection Board (MSPB), staff attorneys represent the Commission's interests before the MSPB. The MSPB appeals process already provides for, and even encourages informal ADR procedures, in that the judges who preside over these cases aggressively encourage resolution short of a full hearing or trial and actively participate in settlement efforts. Direct negotiation is employed in these circumstances.

iii. EEOC claims. These are claims pursuant to the Civil Rights Acts, Rehabilitation Act, and Americans With Disabilities Act before the Equal Employment Opportunity Commission (EEOC). Informal ADR procedures are utilized during the internal Commission appeals process. A Commission EEO counselor acts as a facilitator in attempting to resolve the matter short of an appeal to the EEOC.

iv. FOIA/CTR matters. The General Counsel decides Freedom of Information Act (FOIA) appeals by requesters from determinations by the Commission's FOIA Officer. These matters involve FOIA requests for documents, FOIA requests for expedited review or production of documents. and confidential treatment requests ("CTRs") to withhold documents from disclosure. These cases are normally decided quickly, and are very rarely appealed to court. When a case appears headed for court, negotiations between the parties often occur.

v. Procurement and government contracts. These cases involve bid protests and government contract disputes. Resolution of these matters is governed by specific dispute resolution statutes, including the Contract Disputes Act,[74] and already involves use of ADR-like procedures.

vi. Rule 2(e) professional disciplinary proceedings. Rule 2(e) of the Commission's Rules of Practice[75] authorizes the Commission to bar or suspend the privilege of accountants, attorneys, and other professionals of practicing before the Commission. Rule 2(e) cases are administrative proceedings similar in procedural format to the administrative proceedings prosecuted by the Division of Enforcement against broker-dealers and investment advisers, involving notice of charges, an opportunity to answer and defend, pre-trial, trial, and post-trial procedures, and a decision by an ALJ which is appealable to the Commission, with the Commission's decision appealable to a U.S. Court of Appeals. The staff may enter into negotiations and propose settlements to the Commission prior to the Rule 2(e) hearing. These negotiations are informal and generally effective, and result in a high percentage of settlements.

vii. Non-party subpoenas. Staff attorneys respond to document and deposition subpoenas from parties in private actions, criminal defendants, and U.S. Attorneys seeking documents and/or testimony from Commissioners and staff in cases where the Commission is not a party. The staff normally engages in direct negotiations with the party issuing the subpoena in an attempt to resolve the mater without the necessity of making an application to the court. These matters are often quickly resolved, with the Commission generally producing public, non-privileged material, and the requesting party agreeing to withdraw his or her request for other materials. Otherwise, they are litigated through quickly-resolved motions filed in the courts, involving Commission motions for protective orders, or motions to compel made by subpoenaing parties. Comment is solicited as to whether ADR would be useful in the more difficult cases where the requesting party insists on receiving privileged or non-public materials, given the Commission's position that non-public and privileged material should not be produced.

Counsel also provides assistance to the Division of Enforcement in its law enforcement programs.

[71] For example, under the Holding Company Act, the Commission is directed to revoke its order granting an exemption if it later finds that the circumstances which gave rise to its issuance no longer exist. In addition, the Holding Company and Investment Company Acts authorize the Commission to amend and rescind orders issued under those Acts.

[72] 28 U.S.C. 2412.

[73] See id.

[74] 41 U.S.C. 601–13.

[75] 17 CFR 201.2(e).

viii. RFPA. Staff attorneys respond to motions to quash Commission subpoenas pursuant to the Right to Financial Privacy Act (RFPA).[76] The RFPA provides the exclusive means by which a person can challenge a subpoena issued to a bank for that person's financial records. The challenge is almost always resolved quickly by the district court, which is by statute required to decide the challenge within seven days of the Commission's response.

ix. Motions to vacate injunctions. These cases concern defendants' motion under Federal Rule of Civil Procedure 60(b) to vacate permanent injunctions previously entered in enforcement actions against them. As discussed above in Section III.C.2. of this Release, almost always a party seeking modification or dissolution of a court decree entered in a Commission action will have negotiated with the staff before making the motion in court. If the Commission has agreed, as a result of these negotiations, not to oppose the motion (sometimes as modified), the court will usually grant it. If the Commission has disagreed, ordinarily the party does not make the motion. Thus, there are very few cases where the party makes the motion unaware of the Commission's intended opposition or without having contacted the Commission previously.

If the defendant pursues the motion in court, it is quickly litigated, involving only the motion itself, the Commission's opposition, and a reply. The Commission has been very successful in court in its firm opposition to vacating permanent injunctions without an extraordinary unforeseeable change in circumstances.

x. Collateral motions in enforcement actions. Staff attorneys respond to motions to dismiss counter-claims and cross-claims, and motions in opposition to intervention motions, in enforcement actions. These matters are usually quickly litigated; they involve the Commission's motion to dismiss the counter-claim or cross-claim, an opposition, and the Commission's reply. There is little room for negotiation in these matters, as it is the Commission's policy that no other actions may be consolidated with enforcement actions.

xi. FTCA claims. These are claims pursuant to the Federal Tort Claims Act (FTCA).[77] The FTCA provides the exclusive means for persons (other than federal employees) to sue the government for tort damages. FTCA claims are commenced when the claimant files a "notice of claim" with the Commission. The claim is decided administratively within six months (pursuant to a statutory deadline), and the lawsuit, if any, is generally defended by the U.S. Attorney's Office, and not by the Commission's attorneys.

xii. Defense of claims. OGC attorneys defend suits against the Commission, Commissioners, and staff under a variety of statutes, including damages actions for alleged violations of rights under the U.S. Constitution and challenges to Commission authority or rulemaking. These suits are generally dismissed before any substantive litigation begins.

xiii. Labor negotiations. This is a very rare duty that the General Counsel's Office performs on behalf of the Commission, involving negotiations regarding non-mandatory work condition issues.

c. Appellate litigation. All Commission appellate and *amicus curiae* litigation is centralized in the Office of General Counsel. Commission staff attorneys represent the agency in all U.S. Courts of Appeals and (through the Solicitor General, an official of the Department of Justice) in the U.S. Supreme Court. Typically, these are appeals taken from enforcement actions, almost always by defendants, but sometimes by the Commission, and by respondents from Commission orders in administrative proceedings. Occasionally, there are appeals from Commission orders in proceedings under the Public Utility Holding Company Act or the Investment Company Act. The Commission has an active *amicus curiae* program in which it files briefs and presents oral argument in private litigation (and occasionally in U.S. Government criminal litigation), usually at the appellate level, on its own initiative and at the request of courts for its views. Many appeals in which the Commission is a party and almost all *amicus curiae* cases involve policy issues. Comment is solicited as to whether and how ADR could be utilized effectively in the appellate litigation program.

d. Bankruptcy reorganization. The Commission participates in proceedings for the reorganization of large public companies under Chapter 11 of the U.S. Bankruptcy Code, in the federal courts. It acts as a disinterested advisor to the courts and pays special attention to the rights of public security holders involved in those proceedings. Actual court appearances are made by staff attorneys in certain of the Commission's regional offices. The Office of General Counsel acts as a headquarters for this program, coordinating positions to be taken and obtaining the necessary authorizations from the Commission.

e. Ethical conduct program. The Commission's Ethics Counsel is resident within the Office of General Counsel. She administers the agency's Conduct Regulation and provides advice and guidance under that Regulation, federal conflict of interest statutes, executive orders, Rules of the Office of Government Ethics, and professional responsibility standards of lawyers and accountants. Occasional disputes arise under rules relating to restrictions on securities trading and holding, outside employment, post-government employment, and clearance of articles for publication.

10. Office of Human Resources Management

The Office of Human Resources Management (OHRM) is responsible for the development, implementation, and evaluation of the various human resources and personnel management programs of the Commission. The Director of the Office reports administratively to the Executive Director of the Commission, and manages four branches within the office: The Employee Development and Performance Management Branch, the Staffing and Employee Relations Branch, the Processing and Benefits Branch, and the Occupational Analysis and Compensation Branch.

The following are the primary areas in which disputes arise in connection with OHRM's activities: disciplinary or performance-based actions (e.g., reprimands, suspensions, removals, downgrades); performance evaluations; position classification determinations; leave administration (e.g., leave restrictions, AWOL charges); claims for workers' compensation and unemployment benefits; non-selection; adjustments to working conditions (e.g., details, reassignments, office relocation, tour of duty changes); and suitability determinations.

Both formal and informal procedures currently exist for resolving disputes in these areas. Pursuant to delegated authority for examining, appointments and classification, OHRM makes determinations regarding employee suitability, the rating and ranking of applicants, and the setting of position grades and salaries. These determinations may be challenged and, if not informally resolved within the agency, appealed to the Office of Personnel Management (OPM).

With regard to disciplinary actions, performance management, leave administration, and the assignment of work, OHRM provides advisory support

[76] 12 U.S.C. 3401 et seq.

[77] 28 U.S.C. 2671 et seq.

and procedural guidance to the management officials authorized to take action. Generally, employee challenges to the propriety of such actions are covered by the agency's administrative grievance process. This is a two-stage process which provides the opportunity for the parties directly involved to resolve their disputes informally through direct negotiations. If resolution is not achieved, the issues may be submitted to a deciding official (either the Executive Director of the OHRM Director), who may on occasion request an employee to act as an independent fact-finder before issuing a final decision. Among the matters excluded from the Commission's grievance process are actions subject to administrative review by a third-party, such as the OPM, EEOC, MSPB, Department of Labor (for workers' compensation claims), and state unemployment offices.

IV. Conclusion

This Release has identified the Commission's activities that involve recurring disputes and rulemaking. As it continues to study the utility of ADR and reg-neg in these areas, the Commission is mindful of the fact that such procedures would be used solely as a voluntary means of achieving acceptable resolutions and effective rules and not to take away any existing rights of parties or compromise the Commission's programs or policies. The Commission has not formulated any conclusions to date regarding the potential role of ADR and reg-neg and would greatly appreciate any comments or suggestions.

Dated: January 22, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2078 Filed 1–28–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31752; File No. SR–Amex–92–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Annual Fee on Listed Company Equity Issues

January 22, 1993.

Pursuant to section 19(b)(1) of the Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is increasing the annual fee imposed on listed company equity issues.

The Fee Schedule is available at the Office of the Secretary, Amex, and at the Commission.[1]

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 Amex included statements concerning the purpose of and basis for the fee increase and discussed any comments it received on the fee increase. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 Purposes of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to increase the annual fee imposed on listed company equity issues. The annual fee for stocks, with separate categories based on the number of outstanding shares, would be increased starting in 1993—the minimum fee increasing from $5,500 to $6,500 and the maximum fee increasing from $13,500 to $14,500, with each category increasing by $500 from the minimum level of $6,500 to the maximum of $14,500.[2]

The annual fee was last increased in 1991.[3] The new fee level will keep the Exchange competitive with other equity exchanges offering similar services.

(2) Statutory Basis

The proposed fee increase is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees,and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden Competition

The fee increase will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the fee increase.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons 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 fee increase that are filed with the Commission, and all written communications relating to the proposed fee increase between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–48 and should be submitted by February 19, 1993.

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[1] The exact text of the amended fee schedule was attached as Exhibit A to File No. SR–Amex–92–48 and can be obtained at the places specified in Item IV below.

[2] Although each category of fees increased by $500, the actual proposed increase from existing charges is $1,000.

[3] See Securities Exchange Act Release No. 28908 (February 22, 1991), 56 FR 9033 (March 4, 1991) (Order approving File No. SR–Amex–90–35).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2131 Filed 1–28–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31753; File No. SR–MSE–92–16]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to a Two Month Waiver of Its P&L System Reports Fee

January 22, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 24, 1992, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a two month waiver of the MSE P&L System Reports fee which is set forth in paragraph (n) of the Membership Dues and Fees Section of the MSE Rules.[1] The fees under this section are $125 per account per month and 20 cents per trade. The Exchange intends to make this fee waiver effective for November and December 1992.

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 Purposed Rule Change

1. Purpose

The purpose of the proposed fee waiver is to reduce this expense for members because associated Exchange costs were adequately covered during the year.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the purposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–92–16 and should be submitted by February 19, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2132 Filed 1–28–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31762; File No. SR–NYSE–92–28]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Amendments to the New York Stock Exchange's Notice of Fine for Minor Violation(s) of Rules

January 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 Exchange proposes to amend its Notice of Fine for Minor Violation(s) of Rules ("Notice of Fine") to indicate that Form BD no longer requires disclosure

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[1] The MSE P&L System receives transaction information from the Midwest Clearing Corporation and computes the profitability of these transactions based on mark-to-market prices. These transactions include executed trades from all markets as well as other adjustments to positions. This service is provided for all MSE specialists and those market makers requesting the service. In connection with the P&L System, reports are generated daily showing current security positions and valuations, daily profit or loss based on mark-to-market prices, and month-to-date and fiscal-year-to-date profit or loss.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

of any fine of $2,500 or less, imposed pursuant to NYSE Rule 476A, that is not contested.[3]

The NYSE requests accelerated approval of the proposal. Accelerated approval would enable the Exchange to conform its policy relating to the reporting of minor rule violations to the Commission's amendments to Form BD.

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 III 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

(a) Purpose

On July 27, 1992, the Commission adopted amendments to Item 7(E)(2) of Form BD, the uniform application form for broker-dealer registration under the Act.[4] The amendments eliminate the requirement that broker-dealers disclose on Form BD any violation of a self-regulatory organization ("SRO") rule that is designated as "minor" pursuant to an enforcement and reporting plan filed with, and approved by, the Commission pursuant to Rule 19d–1 under the Act.[5]

The Exchange, a self-regulatory organization with a plan approved under SEC Rule 19d–1 as contained in Exchange Rule 476A,[6] proposes to amend its Notice of Fine in accordance with the Commission's amendments to Form BD. The Exchange's Notice of Fine would be amended to indicate that Form BD no longer requires disclosure of any fine of $2,500 or less, imposed pursuant to Rule 476A, that is not contested.[7]

(b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–28 and should be submitted by March 1, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (1) and (7), 6(d) (1) and 19(d) of the Act and Exchange Act Rule 19d–1.[8]

The Commission believes that the proposal furthers the purposes of section 6(b)(1) of the Act by referencing the Commission's recent amendment to Form BD in the rules of the Exchange. An exchange's ability to enforce compliance by its members and member organizations with exchange and Commission rules is central to its self-regulatory function. In this regard, the NYSE proposal would amend the Exchange's Notice of Fine in accordance with the Commission's amendment to Form BD by specifying that the Commission does not require an amendment to Item 7 of Form BD for any fine of $2,500 or less imposed pursuant to the NYSE's minor rule plan, unless the fine is contested.[9] As noted above, the Commission determined to amend Question (E)(2) of Item 7 of Form BD to exclude SRE rule violations designated as minor pursuant to a plan approved by the Commission under Rule 19d–1.[10] The Commission has approved the NYSE's minor rule violation plan and, as a result, the NYSE files periodic reports in accordance with Rule 19d–1.[11] Accordingly, the Commission believes that is it appropriate for the NYSE to amend its

[3] NYSE Rule 476A authorizes the Exchange, in lieu of commencing a disciplinary proceeding, to impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or nonregistered employee of a member or member organization, for any violation of an Exchange rule which the Exchange determines to be minor in nature.

[4] See Securities Exchange Act Release No. 30958 (July 27, 1992), 57 FR 34028 (July 31, 1992).

[5] 17 CFR 240.19d–1 (1991). Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. An SRO is required, pursuant to paragraph (c)(1) of Rule 19d–1, to file promptly with the Commission any final disciplinary actions taken by the SRO. However, paragraph (c)(2) of Rule 19d–1 establishes that minor rule plan determinations not exceeding $2,500 are not final, thereby permitting the SRO to report on a periodic, as opposed to immediate basis.

[6] See Securities Exchange Act Release Nos. 22415 (September 17, 1985), 50 FR 38600 (September 20, 1985) (approving File No. 4–284) and 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985) (approving NYSE Rule 476A in File No. SR–NYSE–84–27).

[7] In accordance with SEC Rule 19d–1(c)(2), fines in excess of $2,500, assessed under NYSE Rule 476A, are not considered pursuant to the minor rule violation plan and thus are subject to the current reporting requirements of Rule 19d–1(c)(1) of the Act. See *infra* note 5.

[8] 15 U.S.C. 78f(b)(1) and (7), 78f(d)(1), 78s(d) and 17 CFR 240.19(d)–1 (1991).

[9] A party penalized by a Rule 476A citation and fine may either accept the citation or contest the matter and seek a full disciplinary hearing under Rule 476.

[10] See Securities Exchange Act Release No. 30958, *supra* note 4. Prior to the Commission's adoption of amendments to Form BD, Question (E)(2) of Item 7 required applicants to disclose whether an SRO or commodities exchange ever found the applicant or a control affiliate to have been involved in any violation of its rules.

[11] See *Supra* note 6.

Notice of Fine to reflect the Commission's amendment to Form BD.

Because the revised Notice of Fine would specify the Commission's disclosure requirement, the proposal should assist members and member organizations in preparing accurate responses to Question (E)(2) of Item 7 of Form BD. The Commission, therefore, believes that the proposal is consistent with the section 6(b)(7) requirement that the rules of an exchange be consistent with section 6(d)(1) and provide fair procedures for the disciplining of exchange members and persons associated with exchange members.

Finally, the Commission notes that the proposed rule change preserves the regulatory benefits intended by the Act. Although the proposed rule change would conform NYSE rules to amended Form BD's disclosure requirements, the proposal would not alter the Exchange's reporting requirements under Rule 19d–1(c)(2).[12]

The NYSE will continue to have the obligation to report minor rule violation determinations to the Commission on a periodic basis.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The NYSE proposal simply conforms the NYSE's Notice of Fine to the Commission's recent amendments to Form BD.[13] Moreover, the Commission's proposed amendments to Form BD were published in the **Federal Register** for the full statutory period.[14]

It is therefore ordered, Pursuant to section 19(b)(2)[15] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–2171 Filed 1–28–93; 8:45 am]

BILLING CODE 8010–01–M

[12] See *supra* note 5.

[13] See Securities Exchange Act Release No. 30958, *supra* note 4.

[14] See Securities Exchange Act Release No. 29643 (September 6, 1991), 56 FR 44029. All of the comments that addressed the proposed amendment to Item 7 (E)(2) believed that it was appropriate. See Securities Exchange Act Release No. 30958, *supra* note 4.

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30–3(a)(12) (1991).

[Rel. No. IC–19226; 812–8026]

Kidder Peabody California Tax Exempt Money Fund, et al.; Notice of Application

January 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Kidder Peabody California Tax Exempt Money Fund, Kidder Peabody Cash Reserve Fund, Inc., Kidder Peabody Equity Income Fund, Inc., Kidder Peabody Exchange Money Fund, Kidder Peabody Government Income Fund, Inc., Kidder Peabody Government Money Fund, Inc., Kidder Peabody Investment Trust, Kidder Peabody Investment Trust II, Kidder Peabody Municipal Money Market Series, Kidder Peabody Premium Account Fund, Kidder Peabody Tax Exempt Money Fund, Inc. (the "Funds"),[1] Kidder Peabody Asset Management, Inc. (the "Manager"), and Kidder, Peabody & Co. Incorporated (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), 22(d) and from rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds (i) to issue and sell multiple classes of securities representing interests in the same investment portfolio (the "Choice Pricing System") and (ii) to assess and, under certain circumstances, waive or reduce a contingent deferred sales charge ("CDSC") on certain redemptions of their shares.

FILING DATE: The application was filed on August 4, 1992 and amended on November 25, 1992. By letter dated January 15, 1993, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m, on February 16, 1993 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 60 Broad Street, New York, New York 10005–2350.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504–2406, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is an open-end management investment company registered under the Act. Each Fund has entered into a management and/or investment advisory agreement with the Manager pursuant to which the Manager provides management and/or investment advisory services to the Fund. Each Fund has also entered into a distribution agreement pursuant to which the Distributor acts as the principal underwriter for the Fund.

2. Shares of six of the Funds are currently offered to investors at net asset value plus a front-end sales load. These Funds have adopted plans pursuant to rule 12b–1 under the Act ("Rule 12b–1 Plans"). Seven of the Funds are money market funds and issue their shares at net asset value without the imposition of sales charges. These Funds also have adopted Rule 12b–1 Plans.

3. The Directors/Trustees of each Fund, including a majority of the Directors/Trustees who are not "interested persons" of each Fund, as that term is defined in section 2(a)(19) of the Act (the "Independent Directors/Trustees"), have approved the establishment of the Choice Pricing System. Under the Choice Pricing System, each Fund could provide investors with the option of purchasing shares: (1) With a conventional front-end sales load and subject to a service and possibly a distribution fee[2] ("Class A shares" or the "Front-End Load

[1] As used in the application, the term "Fund" includes and is used to refer to each portfolio or series in cases where multiple portfolios or series exist.

[2] As used in this application, the term "service fee" has the meaning given to that term in the amendment to Article III, section 26 of the Rules of Fair Pracice of the National Association of Securities Dealers, Inc. ("NASD"). *See* Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985.

Option"), (2) subject to a CDSC and a service fee and a distribution fee ("Class B shares" or the "Deferred Option"), (3) without imposition of a sales charge, a service fee, or a distribution fee ("Class C shares" or the "No-Load Option"), (4) without imposition of a front-end sales load but subject to a service fee and distribution fee and possibly a nominal redemption fee or CDSC ("Class D shares" or the "Pay-As-You-Go Option"), and (5) with or without imposition of a sales charge and subject to a non-rule 12b–1 service fee ("Service Payment") and possibly a distribution fee pursuant to a Rule 12b–1 Plan ("Class E shares" or the "Financial Intermediary Option"). In addition, applicants may from time to time create one or more additional classes of shares, the terms of which may differ from the classes of shares described above.

4. Applicants request that exemptive relief also apply to any other existing or future open-end investment company registered under the Act whose principal underwriter is the Distributor or any person directly or indirectly controlling, controlled by, or under common control with the Distributor and whose shares are divided into multiple classes with differing voting rights and expense allocations and/or that employs a CDSC in a manner substantially similar to that described in the application.[3]

5. Under the Front-End Load Option, investors would purchase Class A shares at the then current net asset value plus a front-end sales load. The sales load generally would be subject to reductions for larger purchases and under a right of accumulation, other discount purchase plans, or other reductions permitted by section 22(d) of the Act. In addition, Class A shareholders of certain Funds would bear the cost of an ongoing service fee, and possibly a distribution fee, under a Rule 12b–1 Plan based upon a percentage of the average daily net asset value of the Class A shares. The aggregate annual rate of such fees is currently expected to be in the range of 0.25% to 0.50% of each Fund's net assets attributable to the class.

[3] The only existing investment company meeting the requirements for exemptive relief specified above that is not a signatory to the application is Liquid Institutional Reserves, which currently offers two classes of shares in each of its three series. See Investment Company Act Release Nos. 18409 (Nov. 15, 1991 (notice) and 18435 (Dec. 10, 1991 (order). Liquid Institution Reserves does not currently intend to rely on the order requested in this application. Applicants represent that if Liquid Institutional Reserves determines in the future to issue multiple classes of shares in reliance on the order requested in the application, it will do so in accordance with the conditions and representations set forth in the application.

6. Under the Deferred Option, investors will purchase Class B shares at the net asset value per share without the imposition of a sales load at the time of purchase. The Funds would also pay a service fee and a distribution fee pursuant to a Rule 12b–1 Plan, based upon the average daily net asset value of the Class B shares, that would compensate the Distributor for its services and expenses in distributing each Fund's shares, including payments made to registered representatives and certain financial institutions as commissions or service fees. It is currently expected that the service fee would not exceed 0.25%, and the distribution fee would not exceed 0.75%, of each Fund's net assets attributable to the class. Class B shares will automatically convert to Class A shares after a period of time, expected to be approximately six years after their issuance, thereby becoming subject to the lower rule 12b–1 fee applicable to Class A shares. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period of his or her purchase may be subject to a CDSC that is paid to the Distributor. It is currently expected that the percentage generally will vary from 5% for redemptions made during the first year from initial purchase to 0% for redemptions made after the sixth year from purchase. Other schedules with different initial percentages and different periods over which the CDSC is charged may also apply. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will also be Class B shares, although these shares will not be subject to the CDSC.

7. Under the No-Load Option, Class C shares would be offered at net asset value without the imposition of either a front-end load or CDSC and without any rule 12b–1 service or distribution fees. It is anticipated that the No-Load Option would be offered to clearly defined investors. Applicants expect to offer shares of the No-Load Option to (1) employee benefit and retirement plans of the Distributor and (2) participants in certain investment advisory programs proposed to be offered by the Manager in the future, when shares are purchased through or in connection with those programs.

8. Under the Pay-As-You-Go Option, investors would purchase Class D shares at net asset value without the imposition of a sales load at the time of purchase, but subject to a service fee, expected not to exceed 0.25%, and an ongoing rule 12b–1 distribution fee, expected not to exceed 0.75%, of each Fund's net assets attributable to the class. Proceeds from the distribution fee would be used primarily to compensate the Distributor for its services and expenses in distributing each Fund's shares, including payments made to registered representatives and certain financial institutions as commissions or service fees. Funds may impose a redemption fee if the Directors/Trustees determine it to be appropriate and any shares subject to a redemption fee will be designated Class D shares. However, no shares purchased prior to the disclosure of a redemption fee in the appropriate prospectus will bear such fee. In the alternative, redemptions of Class D shares may be subject to a CDSC payable to the Distributor on the same terms and conditions applicable to Class B shares, except that the CDSC would be at a lower rate and for a shorter period (currently not anticipated to exceed 1% for redemptions only during the first year after purchase) than that proposed to be imposed on Class B shares and except that Class D shares subject to a CDSC would not automatically convert to Class A shares.

9. Under the Financial Intermediary Option, Class E shares would be available for purchase by banks or other financial intermediaries for the benefit of their customers. The Class E shares would be offered only to or through intermediaries and could not be purchased by individuals directly from the Funds or the Distributor. Each Fund's Class E shares would be offered in connection with a service plan (a "Service Plan") adopted by the Directors/Trustees of the Funds pursuant to procedures affording the major protection to investors provided by rule 12b–1, although the Service Plan would not be adopted pursuant to that rule. Under a Service Plan, the Funds would enter into a shareholder services agreement (a "Service Agreement") with each financial intermediary that purchases Class E shares, requiring the financial intermediary to provide support services to its customers who are beneficial owners of the Class E shares. Under a Service Plan, each Fund would pay a Service Payment directly to participating financial intermediaries for their services and assistance in accordance with the terms of its Service Plan and the relevant Service Agreement and the expense of these payments would be borne entirely by the beneficial owners of the Class E shares to which the Service Agreement relates. Each financial intermediary would receive as consideration for its services a Service Payment expressed as a percentage of the average daily net asset value of the Class E shares held by

the financial intermediary. In addition, Class E shares may be subject upon purchase to payment of a front-end sales load and/or to a distribution fee, in the latter case to be paid pursuant to a Rule 12b–1 Plan.

10. From time to time the Funds may create additional classes of shares, the terms of which may differ from the Class A, Class B, Class C, Class D, and Class E shares only in the following respects: (1) Each class of shares would have a different designation; (2) each class of shares might be sold under different sales arrangements (*e.g.*, sales with a front-end sales charge, subject to a contingent deferred sales charge, or at net asset value); (3) each class of shares would bear any Rule 12b–1 Plan or Service Plan payments related to that class (and any other costs relating to obtaining shareholder approval of the Rule 12b–1 Plan for that class or an amendment to its Rule 12b–1 Plan); (4) each class of shares would bear expenses specifically attributable to the particular class ("Class Expenses") limited to: (a) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (b) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (c) blue sky registration fees incurred by a class of shares; (d) Commission registration fees incurred by a class of shares; (e) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (f) litigation or other legal expenses relating solely to one class of shares; (g) Director's/Trustees' fees incurred as a result of issues relating to one class of shares; and (h) other expenses that are subsequently identified which shall be approved by the Commission pursuant to an amended order; (5) the related voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment, or termination of a Rule 12b–1 Plan) in accordance with the procedures set forth in rule 12b–1, except as provided in condition 18 set forth below; and (6) each class of shares would have different exchange privileges.

11. Under the Choice Pricing System, all expenses incurred by a Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that each class's net asset value and expenses will reflect the expenses associated with that class's Rule 12b–1 Plan or Service Plan (if any), including any costs associated with obtaining any required shareholder approval of the Rule 12b–1 Plan (or an amendment to the Rule 12b–1 Plan), and any Class Expenses attributable to a particular class. Because of the higher distribution fees paid by the holders of certain classes (*e.g.*, Class B and Class D), the net income attributable to and the dividends payable on each class with lower distribution fees would be lower than the net income attributable to and the dividends payable on each class with lower distribution fees (*e.g.*, Class A and Class E), or with no distribution fees at all (Class C). As a result, the net asset value per share of the classes will differ at times. Expenses of a Fund allocated to a particular class of shares of that Fund will be borne on a *pro rata* basis by each outstanding share of that class.

12. Applicants have established the manner in which the net asset value of the classes of shares will be determined and the manner in which dividends and distributions will be paid. The methodology and procedures for calculating the net asset value and dividends/distributions of the classes and the proper allocation of income and expenses among the classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered reports to applicants that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in the reports.

13. Class B shares will, after a period of time, expected to be approximately six years, automatically convert to Class A shares without the imposition of any additional sales charge and, thereafter, be subject to the lower Rule 12b–1 Plan fee applicable to Class A.[4] This conversion feature would be discussed in the relevant prospectus. The purpose of this conversion feature will be to relieve the holders of Class B shares that have been outstanding for a period of time sufficient for the Distributor to have been compensated for distribution expenses related to those shares from the higher Rule 12b–1 Plan to which that class is subject.

14. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares are also Class B shares. However, for purposes of conversion to Class A, all Class B shares in a shareholder's Fund account that were purchased through reinvestment of dividends and other distributions paid in respect of Class B shares (and that have not converted to Class A shares as provided in the following sentence) will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account (other than those in the sub-account referred to in the preceding sentence) convert to Class A, a *pro rata* portion of the Class B shares then in the sub-account will also convert to Class A. The portion will be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions. Each Fund offering Class B shares or having Class B shares outstanding will disclose in its prospectus the foregoing aspects of the conversion feature, including the aspects relating to the conversion of Class B shares purchased through reinvestment of dividends and distributions.

15. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling of the Internal Revenue Service that payment of different dividends on Class A and Class B shares does not result in the Funds' dividends or distributions constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended (the "Code"), and the continuing availability of an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under the Code. The conversion of Class B shares to Class A shares may be suspended if this opinion is no longer available.

16. The CDSC will not be imposed on redemptions of shares that were purchased more than a fixed number of years prior to the redemptions or on those shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the

[4] Shares of Kidder, Peabody Equity Income Fund, Inc., Kidder, Peabody Government Income Fund, Inc., and Kidder, Peabody Exchange Money Fund purchased prior to March 1, 1990 would become Class B shares and would automatically convert to Class A shares after the same time period after their initial purchase; shares of these Funds purchased on or after March 1, 1990 would become Class A shares upon implementation of the Choice Pricing System. Shares of these Funds purchased prior to March 1, 1990 were sold without a front-end load and if redeemed within six years of their date of purchase may be subject to a CDSC at rates that vary based on the length of time between purchase and redemption in reliance upon an exemptive order granted by the Commission. *See* Investment Company Act Release Nos. 15163 (June 23, 1986) (notice) and 15222 (July 24, 1986) (order).

amount that represents the percentage of the net asset value of the shares at the time of redemption.

17. The amount of the CDSC to be imposed will depend on the number of years since the investor purchased the shares being redeemed, as set forth in each Fund's prospectus. The CDSC schedule will comply with the requirements of section 26(d) of the Rules of Fair Practice of the NASD, as amended from time to time.

18. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of the dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. This will result in a charge, if any, imposed at the lowest possible rate.

19. The Funds would waive or reduce the CDSC on redemptions (1) following death or disability, as defined in section 72(m)(7) of the Code, of a shareholder if redemption is made within one year after death or disability of a shareholder and (2) of shares that constitute retirement plan distributions that are permitted to be made without penalty pursuant to the Code, other than tax-free rollovers or transfers of assets. If the Funds waive or reduce the CDSC, the waiver or reduction will be uniformly applied to all offerees in the class specified.

Applicants' Legal Analysis

1. Applicants are requesting an exemptive order to the extent that the proposed issuance and sale of multiple classes of shares representing interests in the Funds might be deemed: (1) to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f)(1) of the Act and (2) to violate the equal voting provisions of section 18(i) of the Act. The creation of multiple classes of shares may result in shares of a class having "priority over (another) class as to * * * payment of dividends" and having unequal voting rights, because under the proposed arrangement: (1) Shareholders of different classes would pay different distribution fees associated with the Rule 12b-1 Plans, and different Service Payments associated with the Service Plans, of the different classes (and related costs as described above) and different Class Expenses and (2) each class would be entitled to exclusive voting rights with respect to matters concerning its Rule 12b-1 Plan.

2. Under the proposal, investors may be relieved under the Choice Pricing System of a portion of the fixed costs normally associated with investing in mutual funds since the costs would, potentially, be spread over a greater number of shares than they would be otherwise. Similarly, some of the Funds currently have an investment advisory agreement under which the fee rates decrease as the net assets of the Fund increase. Shareholders of these Funds could therefore enjoy, under the proposed arrangement, lower effective investment advisory fee rates than they would enjoy if the arrangement were not implemented. Therefore, in order to achieve these potential benefits and obviate the risks associated with the creation of a separate series for each new class of shares, the Funds propose to establish the Choice Pricing System.

3. The abuses that section 18 of the Act is intended to redress are set forth in section 1(b) of the Act which declares "that the national public interest and the interest of investors are adversely affected * * * (7) when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities; or (8) when investment companies operate without adequate assets or reserves." The Choice Pricing System described in the Application does not involve borrowings and does not affect the Fund's existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds, since all shares will participate in all of a Fund's appreciation, income and expenses (with the exception of the different service and distribution fees associated with the various Rule 12b-1 Plans (and related costs as described above) and any Class Expenses).

4. Applicants submit that the proposed Choice Pricing System does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. As noted above, under the Choice Pricing System, mutuality of risk will be preserved with respect to each class of shares in a Fund. Further, since each class of shares will be redeemable at all times (subject to the same limitations set forth in each Fund's prospectus and statement of additional information), since no class of shares will have any preference or priority over any other class in the Fund in the usual sense (that is, no class will have any distribution or liquidation preference with respect to particular assets and no class will be protected by any reserve or other account) and since the similarities and dissimilarities of the classes of shares will be disclosed when required in the Funds' prospectuses and statement of additional information, investors will not be given misleading impressions as to the safety or risk of any class of shares and the nature of each class of shares will not be rendered speculative. Moreover, the Funds' capital structures under the proposed arrangement will not induce any group of shareholders to seek investment in higher risk securities to the detriment of any other group of shareholders since the investment risks of each Fund will be borne equally by all of its shareholders.

Applicant's Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the terms of the various classes of shares of the same Fund will relate solely to: (a) The designation of each class of shares of a Fund; (b) expenses assessed to a class as a result of a Rule 12b–1 Plan providing for a distribution fee or a service fee or a Service Plan (*e.g.*, Class A, Class B, and Class D shares would pay a rule 12b–1 service fee and distribution fee; Class C shares would not pay a service fee or a distribution fee; and Class E shares would pay non-rule 12b–1 Service Payments and possibly a rule 12b–1 distribution fee); (c) different Class Expenses for each class of shares, which are limited to (i) transfer agent fees identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (iii) blue sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) Directors'/Trustees' fees incurred as a result of issues relating to one class of shares (*e.g.*, a higher transfer agency fee may be imposed on the Class B shares than on the Class A, Class C, Class D or Class E shares, and a higher transfer agency fee may be imposed on Class A, Class C, Class D, or Class E shares than on Class C shares); (d) the related voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment, or termination of a Rule 12b–1 Plan) in accordance with the procedures set forth in rule 12b–1,

except as provided in condition 18; (e) different exchange privileges; and (f) the conversion feature applicable only to Class B shares. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission.

2. The Directors/Trustees of each of the Funds, including a majority of the independent Directors/Trustees, shall have approved the Choice Pricing System prior to the implementation of the Choice Pricing System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Choice Pricing System will reflect in detail the reasons for determining that the proposed Choice Pricing System is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Directors/Trustees of the affected Fund, including a majority of the Independent Directors/Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the Directors/Trustees, and the Directors/Trustees shall review, at least quarterly, a written report of the amounts so expended and the purpose for which such expenditures were made.

4. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Directors/Trustees, including a majority of the Independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Manager and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

5. If any class will be subject to a Service Plan, the Service Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating a Service Plan, the Directors/Trustees will specifically consider whether (a) the Service Plan is in the best interest of the applicable classes and their respective shareholders; (b) the services to be performed pursuant to the Service Plan are required for the operation of the applicable classes; (c) the financial intermediaries can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services; and (d) the fees for these services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. If any class will be subject to a Service Plan, each Service Agreement entered into pursuant to the Service Plan will contain a representation by the financial intermediary that any compensation payable to the financial intermediary in connection with the investment of its customers' assets in a Fund: (a) will be disclosed by it to its customers; (b) will be authorized by its Customers; and (c) will not result in an excessive fee to the financial intermediary.

7. If any class will be subject to a Service Plan, each Service Agreement entered into pursuant to the Service Plan will provide that, in the event an issue pertaining to the Service Plan is submitted for shareholder approval, the financial intermediary will vote any shares held for its own account in the same proportion as the vote of those shares held for its Customers' accounts.

8. The Directors/Trustees of the Funds will receive quarterly and annual Statements concerning distribution and shareholder servicing expenditures and Service Payments complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only distribution or servicing expenditures properly attributable to the sale of servicing of one class of shares will be used to support any distribution or servicing fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors/Trustees to support any fees charged to shareholders of that class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors/Trustees in the exercise of their fiduciary duties.

9. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Class Expenses and costs and distribution fees associated with any Rule 12b–1 Plan and Service Plan relating to a particular class will be borne exclusively by each respective class.

10. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses the various classes have been reviewed by the Independent Examiner. The Independent Examiner has rendered a report to applicants stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in those reports. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon this review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to these reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for these work papers by a senior member of the Division of the Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial reports of the Independent Examiner are each a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests," as defined and described in the Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or a similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset

value and dividends/distributions among the various classes of shares and the proper allocation of income and among the classes of shares and this representation has been concurred with by the Independent Examiner in the initial reports referred to in condition (10) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

12. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

13. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Choice Pricing System will be set forth in guidelines that will be furnished to the Directors/Trustees as part of the materials setting forth the duties and responsibilities of the Directors/Trustees.

15. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, CDSCs, and exchange privileges applicable to each class of shares in every prospectus regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset values and public offering prices will present each class of shares separately.

16. Class B shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge.

17. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to their Rule 12b–1 Plans or Service Plans in reliance on the exemptive order.

18. If a Fund implements any amendment to its Rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing Class B shares will stop converting into Class A unless the Class B shareholders, voting separately as a class, approve the proposal. The Directors/Trustees shall take such action as is necessary to ensure that existing Class B shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class A. If deemed advisable by the Directors/Trustees to implement the foregoing, such action may include the exchange of all existing Class B shares for a new class ("New Class B"), identical to existing Class B shares in all material respects except that New Class B will convert into New Class A. New Class A or New Class B may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Directors/Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Class A or New Class B shall be borne solely by the Manager and the Distributor. Class B shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to the Class B shares are disclosed in an effective registration statement.

19. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be re-proposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2130 Filed 1–28–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19227; 812–8140]

MetLife—State Street Equity Trust, et al.; Notice of Application

January 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: MetLife—State Street Equity Trust; MetLife—State Street Fixed Income Trust; MetLife—State Street Income Trust; MetLife—State Street Money Market Trust; MetLife—State Street Tax-Exempt Trust; State Street Capital Trust; State Street Exchange Trust; State Street Fund for Foundations and Endowments; State Street Growth Trust; and State Street Master Investment Trust (collectively, the "Trusts"); State Street Research Investment Services, Inc.; SSRM Services, Inc. (collectively, the "Distributors"), and State Street Research & Management Company (the "Adviser").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) for an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) that would permit the Trusts (a) to issue multiple classes of shares representing interests in the same portfolio of securities, and (b) to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and to waive the CDSC in certain cases.

FILING DATE: The application was filed on November 4, 1992, and amendments thereto were filed on December 21, 1992, and January 7, 1993. By supplemental letters dated January 20, 1993 and January 21, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice

period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 16, 1993, 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 Fifth Street, NW., Washington, DC 20549. Applicants, One Financial Center, Boston, Massachusetts 02111–2609.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

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. The Trusts are open-end management investment companies registered under the Act and organized as Massachusetts business trusts. Each Trust is a series company, with each series being referred to herein as a Fund. The Adviser serves as the investment adviser of each Fund. Each of the Distributors acts as principal underwriter of shares of one or more of the Funds.

2. Certain of the Funds currently offer their shares to the public at net asset value plus a front-end sales charge. Other of the Funds offer their shares to the public at net asset value. Several Funds have adopted a plan of distribution pursuant to rule 12b–1 under the Act. None of the Funds currently imposes a CDSC.[1]

3. Applicants seek an exemptive order that would permit the Funds to offer multiple classes of shares representing interests in the same portfolio of securities and to assess a CDSC on certain redemptions of shares.[2]

A. The Proposed Multiple Class Arrangement

1. Applicants propose to establish a multiple class arrangement in which each Fund may offer some or all of four different classes of shares.

2. Existing shares that are subject to a distribution fee would be designated as Class A shares. Class A shares would continue to be subject to distribution fees pursuant to the existing rule 12b–1 plans. Class A shares would continue to be sold at net asset value plus a front-end sales charge of up to 4.50%. The sales load would be subject to reductions for larger purchases, under a quantity discount, under a right of accumulation, or under a letter of intent. The sales load also would be subject to certain other reductions permitted by section 22(d) and set forth in the registration statement of each of the Trusts. For sales over $1 million, no front-end sales load would be charged. However, a "finder's fee" would be paid by the Distributor to the selling broker at the time of sale. The amount of this finder's fee would range from 1.0% to 0.25% of the sale, depending on the amount of the sale and whether the Fund is an equity or fixed-income fund. Shares sold with a finder's fee payable and redeemed within one year would be subject to a CDSC equal to 1.0% of the lesser of the purchase price or the then net asset value of the shares redeemed.

3. Class B shares would be offered to investors at net asset value. A fee of up to 4.00% would be paid to the selling securities dealer by the Distributor at the time of sale of Class B shares. Class B shares are designed to permit the investor to purchase shares without the assessment of a front-end sales load while permitting the Distributor to pay a commission and other distribution expenditures on the sale of the Class B shares to securities dealers and others selling shares of a Fund. Each Fund would pay to the Distributor a distribution fee calculated at an annual rate of up to 0.75% of the average daily net asset value of the Class B shares and a service fee at an annual rate of up to 0.25% of the average daily net asset value of the Class B shares. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period after purchase (which would range from one to five years) generally would be subject to a CDSC imposed by the Distributor. The CDSC would range from 2.00% to 5.00% on shares redeemed during the first year after purchase and would decline over the applicable CDSC period, so that redemptions of shares held after that period would not be subject to a CDSC. Under certain conditions, Class B shares would not be subject to a CDSC upon redemption.

4. Class C shares would be sold at net asset value without the imposition of a sales load at the time of purchase and would not be subject to the imposition of a CDSC or any distribution or service fees. It is expected that Class C shares would be offered primarily for purchase by institutions or by or for the account of participants in employee benefit plans, such as pension and employee savings plans, or members of a professional group or organization. In addition, existing shares that are not subject to a distribution fee would be designated as Class C shares.

5. Class D shares would be sold at net asset value without the imposition of a sales load at the time of purchase but would be subject to a distribution fee calculated at an annual rate of 0.75% of the average daily net assets of Class D shares and a service fee calculated at an annual rate of 0.25% of the average daily net asset value of Class D shares. Class D shares would also be subject to a 1.00% CDSC for shares redeemed during the first year of the purchase.

6. In addition, other classes of shares of the Funds may be offered from time to time, each in connection with one or more rule 12b–1 plans, which may differ from the plans and payments described herein, or with no distribution or service plans or payments at all. Any such classes would, however, comply with all of the conditions contained in the application.

7. Income would be allocated to each class of shares based on the relative net asset value of each class. Expenses would be allocated to each class based on the relative net asset value of each

[1] MetLife-State Street Equity Trust has been granted an order permitting the Trust to assess a CDSC in certain cases. Investment Company Act Release Nos. 15073 (Apr. 24, 1986) (notice) and 15107 (May 19, 1986) (order). As of the date of the application, no such charges have been assessed in reliance on that order. Applicants intend that such order will be superseded by the order requested in the application.

[2] Applicants request that any relief also apply to (a) other investment companies that become a part of the same "group of investment companies," as defined in rule 11a–3 under the Act; (b) any future portfolio series of the Trusts; and (c) future investment companies which hold themselves out to investors as being related for purposes of investment and investor services, and whose principal investment adviser is the Adviser or an affiliate of the Adviser that is controlling, controlled by, or under common control with the Adviser, or whose principal underwriter is either of the Distributors or an affiliate of the Distributors that is controlling, controlled by, or under common control with the Distributors. The foregoing entities would be subject to each of the conditions of the application and would be operated in a manner substantially similar to the manner described in the application.

class, except that each class's net asset value and expenses would reflect any expenses that are directly attributable to one class ("Class Expenses"). Because shares of a particular class would bear Class Expenses that differ from the Class Expenses of other classes of shares of the same Fund, the net income of, and dividends payable with respect to, each particular class would generally differ from the net income of, and the dividends payable with respect to, the other classes of shares of such Fund. Similarly, because of such differing Class Expenses, to the extent that a Fund has undistributed net income, the net asset value of its various classes would also differ.

8. Certain Funds may adopt a conversion feature. Class B shares of such Funds would remain outstanding for a specified period. At the end of such period, Class B shares (except those purchased through the reinvestment of dividends and distributions) would automatically convert to Class A shares of that Fund at net asset value, and as a result, thereafter would be subject to lower distribution fees. For purposes of calculating the holding period required for conversion, Class B shares shall be deemed to have been issued (a) on the date on which the issuance of such Class B shares occurred; or (b) for Class B shares obtained through an exchange, or a series of exchanges, the date on which the issuance of the original Class B shares occurred.

9. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares also would be Class B shares. However, for purposes of conversion to Class A shares, all such Class B shares would be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account (other than those in the sub-account) convert to Class A, a *pro rata* portion of the Class B shares in the sub-account also would convert to Class A. The portion would be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions.

10. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling of the Internal Revenue Service or an opinion of counsel that payment of different dividends on Class A and Class B shares does not result in the Fund's dividends or distributions constituting "preferential dividends" under the Internal Revenue Code (the "Code"), and the continuing availability of an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under federal income tax law. The conversion of Class B shares to Class A shares may be suspended if such an opinion is no longer available. In the event that conversions of Class B shares do not occur, Class B shares would continue to be subject to the higher distribution fee and any higher class expenses applicable to Class B shares for an indefinite period.

11. Shares of a Fund currently may be exchanged for shares in certain other Funds. Exchanges are made on the basis of the relative net asset value of the respective shares to be exchanged, except that sales charges may apply if the exchange is from a Fund which does not have a sales charge schedule and into a Fund which does have a sales charge schedule. Under the proposed multiple class arrangement, shares of each particular class would be exchangeable only for shares of the same class of another Fund. All such exchanges will comply with rule 11a–3 under the Act.

B. The CDSC

1. Applicants propose to charge a CDSC on certain redemptions of Class A, Class B, and Class D shares of the Funds. The CDSC will not be imposed on redemptions of shares which are purchased more than five years prior to redemption with respect to Class B shares, or one year prior to redemption with respect to Class A or Class D shares. No CDSC will be imposed on shares derived from reinvestment of distributions, or which represent an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC period. In no event would the aggregate amount of the CDSC exceed five percent of the aggregate purchase payments made by the investor for Class B shares, or one percent of the aggregate purchase payments made by an investor for Class A or Class D shares. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gain distributions, and finally of other shares held by the shareholder for the longest period of time.

2. Applicants request relief to waive the CDSC (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Code, of a shareholder if redemption is made within one year of death or disability or a shareholder; (b) in connection with qualified retirement plan distributions which are permitted to be made without penalty pursuant to the Code, or, alternatively, with respect to a redemption made mandatory by virtue of the Code's application to such retirement accounts; (c) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (d) in connection with redemptions the proceeds of which are reinvested in shares of the same Fund within 365 days after such redemption; and (e) in connection with redemptions by tax-exempt employee benefit plans resulting from the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Funds would be improper.

3. If the Funds waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified. If the Trustees of a Fund which has been waiving or reducing its CDSC pursuant to any of the items set forth above determine not to waive or reduce such CDSC any longer, the disclosure in the Fund's prospectus will be appropriately revised. Also, any Class A, Class B or Class D shares purchased prior to the termination of such waiver or reduction would be able to have the CDSC waived or reduced as provided in a Fund's prospectus at the time of the purchase of such shares.

4. Applicants state that no CDSC will be imposed on any shares issued prior to the date of the order granting the exemptive relief requested in the application.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) of the Act to the extent the multiple class arrangement may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights under the multiple class arrangement may violate the provisions of section 18(i). Applicants assert that the multiple class arrangement does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. Each class of shares will be redeemable at all times. No class of shares will have distribution or liquidation preferences to particular assets and no class will be protected by any reserve or other account. In addition, the proposed arrangement will not increase the speculative character of the shares of the

Funds since all such shares will participate *pro rata* in all of a Fund's income and expenses with the exception of the differing Class Expenses.

2. Applicants state that owners of each class of shares may be relieved of a portion of the fixed cost normally associated with investing in mutual funds because such costs would, potentially, be spread over a greater number of shares than they would be otherwise.

3. Applicants assert that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans is equitable and would not discriminate against any group of shareholders. With respect to any class in a Fund, the rights and privileges of the shares in such class would be identical.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each class of Shares will represent interests in the same portfolio of investments of a Fund and will be identical in all respects, except as set forth below. The only differences among classes of Shares of the same Fund will relate solely to: (i) the impact of the disproportionate payments made under the 12b–1 Plan, any incremental expenses which the Board of Trustees of each Trust, including a majority of the independent Trustees, determines should be allocated or charged on a class basis, which expenses are limited to transfer agency fees, printing and postage expenses relating to preparing and distributing materials to shareholders and investors (such as shareholder reports, prospectuses and proxies), blue sky and Commission registration expenses, administrative and support personnel salaries and expenses, litigation or other legal expenses relating to solely the class, and Trustees' fees incurred as a result of issues relating solely to one class (together with fees payable pursuant to 12b–1 Plans, "Class Expenses"); and any other incremental expenses subsequently identified that should be properly allocated or charged to one class which shall be approved by the Commission pursuant to an amended order, (ii) voting rights on matters that pertain to 12b–1 Plans, (iii) exchange privileges, (iv) the designation of each class of shares of a Fund, and (v) any conversion feature applicable to Class B shares.

2. The Trustees of the Trust, including a majority of the independent trustees, will approve the offering of different classes of Shares (the "Multi-Class System"). The minutes of the meetings of the Trustees of the Trust regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of the Trust and its shareholders.

3. The initial determination of the Class Expenses that will be allocated or charged to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees of the Trust including a majority of the Trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts of such expenses and the purposes for which such expenditures were made.

4. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of Shares. The Trustees, including a majority of the independent Trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor of each Fund will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own cost will take such steps as are necessary to remedy such conflict up to and including establishing a new registered management investment company.

5. The Trustees will receive quarterly and annual statements concerning the amounts expended under the 12b–1 Plans and related agreements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of Shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of Shares will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by each Fund with respect to a class of Shares of a Fund will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Fund with respect to each other class of Shares in the same Fund, except that each particular class will bear exclusively its own Class Expenses.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render, at least annually, a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers of the Expert with respect to such reports, following request by the Trust, which the Trust agrees to provide, will be available for inspection by the Commission staff upon written request by a senior member of the Division of Investment Management limited to the Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and on-going reports would be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of Shares and the proper allocation of expenses among the classes of Shares and this representation has been concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert or an appropriate substitute

Expert on an on-going basis at least annually in the on-going reports referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the on-going reports.

9. Each prospectus pursuant to which one or more classes of a Fund are offered will include a statement to the effect that a salesperson or any other person entitled to receive compensation for selling or servicing the Shares may receive different compensation with respect to one particular class of Shares over another class in the same Fund.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the multiple class system will be set forth in guidelines to be furnished to the Trustees.

11. The Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of a Fund in every prospectus, regardless of whether all classes of a Fund are offered through each prospectus. The Trust will disclose the respective expenses and performance data applicable to all classes of a Fund in every shareholder report. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of a Fund, it will also disclose the respective expenses and/or performance data applicable to all classes of such Fund. The information provided by the applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will separately present this information for each class of Shares.

12. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization of or acquiescence in any particular level of payments that applicants may make pursuant to their 12b–1 plan or shareholders services plan in reliance on this exemptive order.

13. The Distributor will adopt compliance standards as to when each class of Shares may appropriately be sold to particular investors. Applicants will require all persons selling Shares of a Fund to agree to conform to such standards.

14. Class B shares of a Fund that adopts a conversion feature will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing Class B shares will stop converting into Class A unless the Class B shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Class B shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class A. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Class B shares for a new class ("New Class B"), identical to existing Class B shares in all material respects except that New Class B will convert into New Class A. New Class A or New Class B may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Class A or New Class B shall be borne solely by the Adviser and the Distributor. Class B shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to the Class B shares are disclosed in an effective registration statement.

16. In administering the CDSC, applicants will comply with proposed rule 6c–10 under the Act, as such rule is 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. 93–2172 Filed 1–28–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC - 19228; 812–8018]

New Century Fund, Inc.; Notice of Application

January 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: New Century Fund Inc. ("New Century"), New Century Management, Inc.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 23(b) for an exemption from sections 18(d) and 23(b).

SUMMARY OF APPLICATION: Applicants seek an order to permit New Century to sell a limited amount of its shares on a delayed basis at the same price per share as the initial public offering price. Shares sold on a delayed basis would not exceed 26.7% of the total number of shares that eventually would be issued.

FILING DATE: The application was filed on July 30, 1992 and amended on October 28, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 12 Briarwood Drive, Short Hills, NJ 07078.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. New Century is a Maryland corporation that plans to elect, under

section 54 of the Act, to be regulated as a business development company ("BDC"). New Century's investment objective is long-term capital appreciation. New Century will seek to achieve its objective by investing primarily in private equity investments in emerging growth companies, venture capital opportunities, and recapitalizations of both private and public companies. New Century will be advised by New Century Management, Inc., a Delaware corporation in its organizational stage.

2. New Century proposes to raise its capital through sales of common stock at $20 per share. The sales would take place in two phases: A private offering to large investors and a subsequent public offering pursuant to a conventional firm commitment underwriting.

3. In the first phase, New Century would engage in a private offering in which one-third of the total number of shares to be sold would be offered to large investors.[1] Each investor that wishes to invest in the private offering ("Subscribers") would be required to commit to purchase a minimum of 25,000 shares ($500,000). Subscribers would commit to purchase shares in two ways. First, Subscribers would agree to purchase 20% of their total commitment at the closing of the public offering (the "Initial Shares"). Second, Subscribers would execute a subscription agreement agreeing to purchase the remaining 80% of their shares over a five-year period (the "Subscription Shares"). Thus, pursuant to their commitments, Subscribers would purchase both Initial Shares and Subscription Shares. The commitments would be subject to the completion of the sale to public investors of at least twice as many shares as covered by the private offering. Subscribers would pay the same price per share as the public offering price for both the Initial Shares and the Subscription Shares.

4. Under the terms of the subscription agreements, New Century would have the right to call in a Subscriber's obligation to purchase Subscription Shares at any time during the five-year period, provided that at the time of the call at least 80% of New Century's paid in capital is invested in, committed to, or reserved for, specific portfolio companies, and subject to the proviso that no more than one-half the total commitment be called for at any one time. Subscribers also would have the right to elect to purchase at any time all or any part of any outstanding portion of their commitment of Subscription Shares. Subscribers would be required to purchase, and New Century to sell, any Subscription Shares that remain outstanding at the end of the five years.

5. After New Century has received sufficient commitments from Subscribers, it will terminate the private offering and file a registration statement under the Securities Act of 1933 for an underwritten public offering.[2] The underwriters will purchase at least two times the total number of shares Subscribers have committed to buy. Thus, immediately after the close of the public offering, New Century would have issued 73.3% of the total number of shares that eventually would be issued.[3] The Subscription Share that would be issued in the future would account for the remaining 26.7% of New Century's shares.

6. New Century may use one or more underwriters to place all or a part of the shares sold in the private placement, and may pay the underwriters a reasonable and customary commission for their services. In the public offering, New Century would enter into a firm commitment underwriting whereby the underwriters, at the close of the public offering, would purchase two times the total number of shares Subscribers have committed to buy. New Century would allow the underwriters a reasonable and customary underwriting discount for shares sold in the public offering.

7. New Century will undertake to have its shares listed on a national securities exchange as soon as possible following the conclusion of the public offering. New Century would register its shares under the Securities Exchange Act of 1934, as modified by section 30(c) of the Act, and would be subject to the periodic reporting requirements and would report to its shareholders at least semi-annually.

8. The proposed structure would give Subscribers the ability to participate in distributions resulting from an early successful investment by electing to pay in the balance of their subscriptions. To the extent that Subscribers exercise this right, the other investors in New Century would benefit from its ability to use the additional capital before it would otherwise have been paid in.

9. In accordance with section 18(d) of the Act, New Century also may make a rights offering to all shareholders. Any rights offering would be made only if the exercise price of the rights did not exceed the price at which shares would be sold pursuant to the subscription agreements (*see* condition 3). New Century contemplates that it might make such a rights offering in connection with a call on Subscribers to purchase shares at the subscription price. If the rights offering were made contemporaneous with a call on Subscribers, New Century would announce the proposed call prior to the record date for the issuance of such rights. This would allow Subscribers to elect to purchase in advance some or all of the shares they would otherwise be required to purchase, and thus to receive rights issued with respect to those shares.

10. Such an offering also would benefit the existing shareholders by enabling them to purchase shares for less than their market price, to the extent the exercise price did not exceed the market price. Unless all of the Subscribers elected to pay in the entire unfulfilled balance of their commitment, a rights offering would benefit non-Subscribers disproportionately. Thus, if the net asset value were above the subscription price when Subscription Shares were issued, a rights offering could make up at least a portion of the dilution. In addition, the issuance of such rights would increase the proportion of New Century held by non-Subscribers and therefore would reduce the per-share impact on them, of any dilution. Because the rights would be transferable, shareholders would not be required to exercise the rights in order to capture their benefits, but could sell them on the market.

Applicants' Legal Analysis

1. Applicants believe that their proposal addresses a major impediment to the achievement of the purposes of the Small Business Incentive Act of 1980 (the "BDC Amendments"). Congress adopted the BDC Amendments in 1980 to promote capital formation for small businesses by reducing the obstacles that the Act posed for public venture capital funds. At the time BDC Amendments were passed, it was expected that they would lead to the creation of numerous public venture capital funds with the resulting increased availability of capital to emerging businesses. Those expectations have not been fulfilled. A

[1] The private offering would be addressed primarily to institutional investors of the sort that typically have confined their venture capital investments to private venture capital funds, but would be open to anyone willing to commit to a total purchase of at least $500,000.

[2] Applicants state that the private offering will be terminated before the filing of the registration statement so that the two offerings will not be integrated under rule 152 of the Securities Act of 1933. *See* Black Box, Inc. (pub. avail. June 26, 1990). Applicants do not seek, and have not obtained, any assurance from the Commission or the staff regarding this issue.

[3] Retail investors would purchase two-thirds of New Century's Shares and Subscribers would purchase 20% of the remaining one-third of New Century's shares, for a total of 73.3%.

major reason is that institutional investors have proved reluctant to invest in public venture capital funds as they typically have been structured.

2. Private venture capital funds typically take several years to invest their funds, normally reserving money for "follow-on" investments in portfolio companies. To accommodate their needs, private venture capital funds have come to raise their capital through subscription agreements that provide for investors to make investments in installments over several years.

3. Because of the limitations of the Act, specifically sections 18 and 23, as described below, BDCs have not been able to operate in this manner. BDCs typically raise most of their capital in an initial public offering, while placing their uninvested cash in high quality but lower yielding debt securities. By holding high quality debt securities, BDCs typically have a yield disadvantage as compared to private venture capital funds. Because of this, institutional investors that wish to invest in venture capital pools generally have avoided BDCs in favor of private venture capital funds. Applicants believe that their proposed structure, which allows for some delayed funding, would permit New Century to operate more like a conventional private venture capital fund. Because it would be publicly traded, it also would offer a degree of liquidity not available in private funds.

4. Applicants seek relief from sections 18(d) and 23(b). Sections 18(d) and 23(b) are made applicable to BDCs by sections 61 and 63, respectively. Section 18(d) makes it unlawful, except in certain limited circumstances, "for any registered investment company to issue any warrant or right to subscribe to or purchase a security of which such company is the issuer * * *." Because Subscribers would have a right as well as an obligation to acquire additional shares, it is possible to construe a "right to * * * purchase" to encompass a Subscriber's commitment to purchase Subscription Shares. If section 18(d) were so construed, it would prohibit New Century's proposed structure.

5. Section 23(b) provides that "no registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock" except in certain limited situations. It is possible that at the time a Subscriber purchases Subscription Shares the net asset value of New Century's shares might exceed the $20 per share subscription price. If this were the case, in the absence of exemptive relief section 23(b) would prohibit New Century from issuing Subscription Shares as provided in the proposed subscription agreements.

6. The sale of shares in a closed-end fund at a price below the net asset value of the shares has the effect of diluting the interests of existing shareholders. Sections 18(d) and 23(b) were intended to limit such dilution. Congress, however, did not intend that dilution should be prohibited altogether; both sections contain exceptions that permit dilutive transactions under certain circumstances.

7. In addition, the BDC Amendments recognize the desirability of granting flexibility to BDCs with respect to the question of dilution. Notwithstanding the general provisions of section 18(d), BDCs may issue warrants or rights accompanying debt securities under the exception provided by section 61(a)(3). In addition, section 63(2) permits BDCs, if they comply with certain procedural requirements, to issue stock at its market value, even when it is below net asset value.

8. Section 61(a)(3) provides a useful analogy to New Century's proposed structure. Both allow the possibility of dilution arising from the issuance of shares in the future at a price fixed in the present. In addition, both section 61(a)(3) and New Century's proposal are intended to provide greater flexibility in raising capital from institutional investors—debt capital in the case of the statutory provisions and equity capital in the case of New Century.

9. Section 61(a)(3) permits a BDC to sell debt securities accompanied by "warrants, options, or rights to subscribe or convert to voting securities" of the BDC. There are several conditions on the issuance of rights under section 61(a)(3) that are designed to protect investors. The proposed structure of New Century contains similar protections. The exercise or conversion price may not be less than the current market value of the voting securities or, if there is no market, the net asset value. Section 61(a)(3) also limits the amounts of voting securities that would result from the exercise of all such rights to generally not more than 25% of the total voting securities that would be outstanding after the exercise. Under New Century's proposal the price of Subscription Shares would be the same as the price for which New Century would be issuing shares at the time the subscription agreement is executed. In addition, Subscription Shares would represent no more than 26.7% of New Century total common stock outstanding.

10. Applicants represent that there proposal offers a substantial advantage over the warrants, options, or rights contemplated by the statute. Holders of warrants, options or rights to purchase shares generally will not exercise them unless the exercise price is below net asset value. Consequently, except in unusual circumstances, sales of stock pursuant to the exercise of the rights permitted by section 61(a)(3) always will cause dilution. Subscribers, on the other hand, are committed to purchase Subscription Shares at a fixed price. The purchase price either could be above or below net asset value when Subscribers purchase shares. If the price is above net asset value, the issuance of Subscription Shares would be antidilutive.

11. In addition, applicants believe their proposal differs from rights issued pursuant to section 61(a)(3) with respect to the control over the timing of the issuance of new shares. Warrants, options, and rights typically are exercisable at the election of the holder. The issuer has no control over when it may be required to issue more stock and take in more capital. Like these rights, the subscription agreements also would give Subscribers the right to choose to purchase shares whenever they want. Unlike them, however, New Century would be able to call on subscribers to pay in new capital at New Century's election when additional money is required. In this respect, New Century's structure is better for shareholders than the rights permitted under section 61(a)(3).

12. Applicants believe that their proposed structure would offer advantages for both retail and institutional investors. Retail investors would benefit from the oversight of New Century's management by sophisticated institutional investors. Retail investors also would have expanded opportunities to invest in a large, professionally-managed venture capital pool, an opportunity now limited by the high minimum investment required by private venture capital funds. Institutional investors would benefit by the increased liquidity available in a public vehicle. Furthermore, by combining retail investors and institutional investors in the same investment vehicle, New Century's structure should help attain the Congressional goal of increasing the amount of capital available to entrepreneurial businesses.

13. Section 6(c) of the Act permits the SEC to exempt any transaction or class of transaction from the provisions of the Act to the extent that such exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In addition,

section 23(b) of the Act permits the SEC to exempt by order the sale by a registered closed-end investment company of its securities at a price below the current net asset value under such circumstances as the SEC may permit for the protection of investors. Applicants believe that the requested relief is in the public interest, and is consistent with the protection of investors and the policies of the Act.

Applicants' Conditions

Applicants agree that the order of the SEC granting the requested exemptions would be subject to the following conditions:

1. Each Subscriber shall purchase at the consummation of the public offering shares numbering not less than 25% of the total number of Subscription Shares it has agreed to purchase pursuant to its subscription agreement.

2. New Century shall sell a sufficient number of shares in the public offering so that the total number of Subscription Shares shall not exceed 26.7% of the number of shares that will be outstanding upon the issuance of all of the Subscription Shares.

3. Until all of the Subscription Shares have been issued and paid for, New Century may not issue any warrants, options, or rights to subscribe for or convert to shares of New Century other than warrants or rights permitted under section 18(d) of the Act. The exercise price of the rights shall not exceed the price at which the Subscription Shares are to be issued. Any such rights offering shall comply with the rules and administrative policies of the SEC then in effect.

4. The subscription agreements shall provide that New Century may require Subscribers to take and pay for up to 50% of the Subscription Shares at any time during the five-year period commencing on the consummation of the public offering, provided that at least 80% of New Century's paid-in capital is invested in, committed to, or reserved for investment in specific portfolio companies.

5. The subscription agreements shall require Subscribers to take and pay for any Subscription Shares not previously paid for at the end of the five-year period commencing on the consummation of the public offering.

6. The subscription agreements shall provide that the subscription price shall be no less than the public offering price net of any underwriting discounts or commissions granted in the public offering.

7. The subscription agreements shall provide that, if any Subscriber defaults in making any required payment for shares, New Century shall be deemed to have suffered liquidated damages in the amount by which $20 exceeds the market price of the New Century's shares at the time the payment is due, plus $2.50 per share. New Century shall have the right to cancel a number of shares held by the delinquent Subscriber equal to the amount of the liquidated damages divided by the price of shares on the date of the default.

8. New Century's registration statement under the Securities Act of 1933 shall describe fully and thoroughly the material provisions of the subscription agreements. It shall also set forth clearly the risk that the subscription agreements might result in the issuance of shares for consideration less than New Century's per share net asset value at the time of issuance.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2173 Filed 1–28–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2621]

North Carolina (and Contiguous Counties in South Carolina); Declaration of Disaster Loan Area

Robeson County and the contiguous counties of Bladen, Columbus, Cumberland, Hoke, and Scotland in the State of North Carolina and Dillon, and Marlboro Counties in South Carolina constitute a disaster area as a result of damages caused by flooding which began on January 11, 1993. Application for loans for physical damage may be filed until the close of business on March 22, 1993 and for economic injury until the close of business on October 19, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 262106 for North Carolina and 262206 for South Carolina. For economic injury the numbers are 783100 for North Carolina and 783200 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 19, 1993.

Patricia Saiki,

Administrator.

[FR Doc. 93–2118 Filed 1–28–93; 8:45 am]

BILLING CODE 8025–01–M

Interest Rate; Amendment No. 1

In the Notice published on Thursday, December 24, 1992, in Volume 57, Page 61466, the interest rates for 7(a) Section Direct Business Loans and SBA share of immediate participation loans, and the Optional Peg Rate were reversed. The interest rates for the 2nd Quarter of FY 93 are as follows:

	Percent
Direct/IP Loans	7⅞
Optional peg rate	6⅞

Charles R. Hertzberg,

Assistant Administrator for Financial Assitance.

[FR Doc. 93–2123 Filed 1–28–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0248]

Mariner Venture Capital Corp.; Surrender of License

Notice is hereby given that Mariner Venture Capital Corp. (Mariner), 2300 West Glades Road, Suite 440 West Tower, Boca Raton, Florida 33431 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Mariner was licensed by the Small Business Administration on October 2, 1989.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 29, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 22, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–2119 Filed 1–28–93; 8:45 am]

BILLING CODE 8025–01–M

Hartford District Advisory Council; Public Meeting

The U.S. Small Business Administration Hartford District Advisory Council will hold a public meeting at 8:30 a.m. on Tuesday, February 23, 1993 at the U.S. Small Business Administration, 330 Main Street, 2d Floor, Hartford, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jo-Ann Van Vechten, Acting District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240–4670.

Dated: January 22, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils

[FR Doc. 93–2122 Filed 1–28–93; 8:45 am]

BILLING CODE 8025–01–M

Montpelier District Advisory Council; Public Meeting; Rescheduling of Meeting

The U.S. Small Business Administration Montpelier Advisory Council meeting scheduled for February 3, 1993 has been rescheduled for 10 a.m., Thursday, February 4, 1993.

The meeting will be held at the Vermont Chamber of Commerce, Granger Road, Berlin, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Kenneth A. Silvia, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05601, (802) 828–4422.

Dated: January 15, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–2120 Filed 1–28–93; 8:45 am]

BILLING CODE 8023–01–M

Providence District Advisory Council; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting at 11:30 a.m. on Wednesday, February 24, 1993 at the Victoria House Restaurant located on 23 Rathbone Street, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph P. Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528–4580.

Dated: January 22, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–2124 Filed 1–28–92; 8:45 am]

BILLING CODE 8025–01–M

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This notice clarifies the financial reporting for 4% preferred stock issued by Small Business Investment Companies licensed pursuant to section 301(d) of the Small Business Investment Act (15 U.S.C. 681(d)).

DATES: This Notice is effective on January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas C. Bresnan, Staff Accountant, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC. 20416, (202) 205–6514.

SUPPLEMENTARY INFORMATION: Section 301(d) or Specialized Small Business Investment Companies (SSBICs) are required to submit annual audited financial statements to the U.S. Small Business Administration on SBA Form 468. The current format of Form 468 does not include lines specifically designed to accommodate the reporting of 4% preferred stock which may be issued to SBA by SSBICs. As a result, the stock has been reported inconsistently. This notice clarifies the reporting of 4% preferred stock on the current version of Form 468. SBA expects to revise Form 468 in the near future to include specific lines which will accommodate 4% preferred stock.

Background

All preferred stock purchased by SBA from SSBICs on or after November 21, 1989, must be redeemed by the issuing company not later than 15 years from the date of issuance. The preferred stock must be redeemed at par value, plus any unpaid dividends accrued to the redemption date. Dividends accrue at an annual rate of 4%. Because of the mandatory redemption provision, 4% preferred stock is fundamentally different from the 3% preferred stock which SSBICs were eligible to issue to SBA prior to November 21, 1989.

Classification

Four percent preferred stock may not be included under the general heading of "*CAPITAL*" on the Statement of Financial Position, on page 3C of Form 468. The amount of 4% preferred stock issued and outstanding must be shown in the "*Other Liabilities*" section of the Statement of Financial Position.

Carrying Amount

The initial carrying amount of the redeemable preferred stock shall be its par value at the date of issue. At the end of each accounting period, the carrying amount will be increased by the amount of any dividends not currently declared. This amount will be shown on line 39 of the Statement of Financial Position. A breakdown of the total amount on line 39, showing separately the par value of 4% preferred stock, the accrued dividends in arrears, and any other liabilities, must be included on page 3C.

Undeclared Dividends

Cumulative undeclared dividends must be recorded as a charge against undistributed net realized earnings (line 47(b) of the Statement of Financial Position). Some SSBICs may have insufficient retained earnings to cover the dividends in arrears. Ordinarily, a company in these circumstances would reduce paid-in capital by the amount of the excess dividends. Such treatment has the potential to create significant regulatory compliance problems for SSBICs, because paid-in capital is the base for a number of regulatory computations. Therefore, SSBICs shall report all dividends in arrears as a reduction of undistributed net realized earnings, even though this treatment may result in a deficit, and shall not be required to reduce private capital.

Declared Dividends

If the SSBIC has declared the 4% dividend for the current fiscal year, or for any prior periods, such dividends should not be added to the carrying amount of the preferred stock. Because the dividends will be paid within the next fiscal period, they should be reported as a current liability on Line 34 ("Distributions Payable") of the Statement of Financial Position, rather than being included on line 39. In the "*CAPITAL*" section, declared dividends will reduce Undistributed Net Realized Earnings (line 47(b)).

Required Disclosures

In a footnote to the financial statements, the Licensee must provide a description of the terms of the preferred stock issue, including disclosure of the mandatory redemption date and any amount redeemable within five years.

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 et seq., as amended, Pub. L. 100–590 and Pub. L. 101–162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101–162; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100–590.

Dated: January 19, 1993.

Patricia Saiki,

Administrator.

[FR Doc. 93–2117 Filed 1–28–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1759]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting February 25, 1993 in the Conference Room, suite 700, of the ARC Professional Services Group, 600 Maryland Avenue, SW., Washington, DC commencing at 10 a.m.

Study Group 7 deals with matters relating to the space research systems and standard frequency and time systems. The purpose of the meeting is to review work plans for the meetings of each of the Study Group 7 Working Parties that being March 29, 1993.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Those planning to attend the meeting should contact Mr. Roger Andrews, (703) 834–5600 for further information.

Dated: January 14, 1993.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92–2151 Filed 1–28–92; 8:45 am]

BILLING CODE 4710–45–M

Bureau of Consular Affairs

[Public Notice 1760]

Registration for the AA–1 Immigrant Visa Program Under Public Law 101–649

ACTION: Notice of registration for the third year of the AA–1 Immigrant Visa Program.

This public notice provides information on the application procedure for the 40,000 immigrant visas to be made available in the AA–1 category during Fiscal Year 1994. This notice is issued pursuant to 22 CFR part 43, subpart B, as amended on June 29, 1992 which implements section 132 of the Immigration Act of 1990, (Pub. L. 101–649), as amended by the Miscellaneous and Technical Immigration Amendments of 1991 (Pub. L. 102–232).

AA–1 Immigrant Visa "Lottery" Program

Information on the Application Procedures for the 40,000 Immigrant Visas To Be Made Available in the AA–1 Category During Fiscal Year 1994

Section 132 of the Immigration Act of 1990 provides 40,000 immigrant visas for each of fiscal years 1992, 1993, and 1994 to natives of the countries and areas from which immigration was previously identified as having been "adversely affected" by the 1965 immigration legislation. This program is identified by the visa symbol AA–1, and is informally known as the "visa lottery." The law specifies that there must be a separate registration for each year's AA–1 visas. The application period for the second year's visas was completed during 1992, and those visas are being issued until September 1993. This information concerns the application period during 1993 for visas to be issued during fiscal year 1994, the third and final year of the program.

Qualifying Countries and Areas Under the AA–1 Program

Natives (as that term is explained in question 1 on page 3) of the following countries and areas are entitled to apply for AA–1 visas:

Albania
Algeria
Argentina
Austria
Belgium
Canada
Czech Republic
Denmark
Estonia
Finland
France
Guadeloupe
New Caledonia
Germany
Great Britain
Northern Ireland
Bermuda
Gibraltar
Hungary
Iceland
Indonesia
Ireland
Italy
Japan
Latvia
Liechtenstein
Lithuania
Tunisia
Luxembourg
Monaco
Netherlands
Norway
Poland
San Marino
Slovakia
Sweden
Switzerland

How and When To Apply for AA–1 Status

The application period for registration for the visas to be issued during Fiscal Year 1994 (i.e., from October 1993 through September 1994) will begin at 12:01 a.m. (Washington, DC time) on Tuesday, March 2, 1993, and will end at midnight on Wednesday, March 31, 1993. Application must be typed or clearly printed and mailed to the following address: AA–1 Program, P.O. Box 1994, Dulles, VA 20199–1994, U.S.A.

Typed or clearly printed in the upper left hand corner of the front of the envelope must be the country or area (from the list above) of which the applicant is a native. Typed or clearly printed below the country must be the same name and mailing address of the applicant as they are shown on the application contained therein. Failure to include this information will disqualify the application.

Example:

Northern Ireland, George Q. Public, 1234 Any Street, Apt. 5, Center City, NJ 10001.

Only one application may be submitted by or for each applicant during this registration period. (Submission of more than one application will disqualify the person from registration.) Applications for registration will be selected strictly in a random order from among all of those received during the specified period.

Applications must be sent to the address above by regular mail or air mail, and may be mailed from within the United States or from abroad. The information required on the envelope must be typed or clearly printed. Any mail requiring signed receipt such as registered mail, express mail, certified mail, hand-delivered applications, telegrams, or applications sent by courier or any means other than regular mail or air mail will *not* be eligible for the visa lottery. Applications received at the post office box before or after the application period or delivered to any other address will *not* be processed for registration. Only one application may be included in each envelope.

Size of Envelope

The envelope in which each application is mailed must be between 6 inches and 9½ inches (15 cm to 24 cm) in length, and between 3½ inches and 4½ inches (9 cm to 11 cm) in

width. This is necessary to assist the automated processing of the mail.

Information Which Must Be Included on the Application for Registration

Each application must be in the following format:

A sheet of paper on which the following information is typed or clearly printed (in the Roman (English) alphabet):

A. Applicant's Full Name

Last Name, First Name and Middle Name (Underline Last Name/Surname/Family name), **Example:** Public, George Quincy

B. Applicant's Date and Place of Birth

Date of birth: Day, Month, Year, **Example:** 15 November 1961

Place of birth: City/Town, District/County/Province, Country, **Example:** Toronto, Ontario, Canada

C. Name, Date and Place of Birth of Applicant's Spouse and Children, if any

The spouse and child(ren) of an applicant who is registered for AA–1 status are automatically entitled to the same status. The spouse or child does NOT need to be born in one of the countries listed above. To obtain a visa on the basis of this derivative status, a child must be under 21 years of age and unmarried.

Note: Do not list parents as they are not entitled to derivative status.

D. Applicant's Mailing Address

The mailing address must be clear and complete, since it will be to that address that the notification letter for the persons who are registered will be sent. A telephone number is optional.

E. United States Consular Office to Which Visa Registration Should Be Sent

Ordinarily, this will be the immigrant visa issuing consular office nearest the applicant's place of residence. If the applicant is in the United States, indicate the immigrant visa issuing office in the country of last previous residence outside the U.S. If the applicant does not know which U.S. consulates issue immigrant visas, list the city and country of the applicant's current residence abroad, or the city and country of last previous residence outside the U.S. and the processing center will identify the proper immigrant visa issuing consular office where the visa registration will be sent for processing.

Persons who claim alternate foreign state chargeability should also include a statement to that effect on the application. (See question No. 1 on page 3.) Only one application may be submitted for each applicant during this application period; persons submitting multiple applications will be disqualified.

There are no other requirements for submitting an application for registration apart from what is specified in A. thru E. above. It is not necessary to include an offer of employment with the registration request. (Applicants who are registered for AA–1 status will need to present an offer of employment in the U.S. at the time of formal visa interview. See question 7 on page 3 for more information on this point.) There is no fee for submission of an AA–1 registration request. A signature is not required on the application.

Frequently Asked Questions About the AA–1 Registration

1. How Is the Term "Native" Defined? Are There Any Basis Upon Which Persons Who Have Not Been Born in a Qualifying Country May Qualify for Registration?

Native means both someone born within one of the countries listed above and someone entitled to be "charged" to such country under the provisions of section 202(b) of the Immigration and Nationality Act. Applicants for AA–1 registration may be charged to the country of birth of a spouse; a child can be charged to the country of birth of a parent; and an applicant born in a country of which neither parent was a native or a resident at the time of his/her birth may be charged to the country of birth of either parent. An applicant who claims the benefit of alternate chargeability must include a statement to that effect on the application for registration, and must show the country of chargeability on the upper left hand corner of the envelope in which the registration request is mailed.

2. What if a Person's Birth Place Was in an "AA–1" Country at the Time of Birth, but Due to Changes in Boundaries Is No Longer Within a Qualifying Country?

For a person to be considered to have been born in a qualifying country, the place of birth must be within the boundaries currently recognized by the U.S.

3. May Persons Who Are in the U.S. Apply for Registration?

Yes, an applicant may be in the U.S. or in another country, and the application may be mailed in the U.S. or abroad.

4. Is Each Applicant Limited to Only One Application During This AA–1 Registration Period?

Yes, the law allows only *one* application *by or for* each person; Submission of more than one application will disqualify the person from registration.

Note: More than 200,000 applications were disqualified during the 1993 visa lottery due to multiple applications. Applicants may be disqualified at time of registration or at the time of the visa interview if more than one entry is detected.

5. May a Husband and a Wife Each Submit a Separate Application?

Yes, a husband and a wife may each submit one application for registration; if either is registered, the other would be entitled to derivative status.

6. Must Each Applicant Submit His/Her Own Request, or May Someone Act on Behalf of an Applicant?

Applicants may prepare and submit their own request for registration, or have someone act on their behalf. Regardless of whether an application is submitted by the applicant directly, or by a relative, friend, attorney etc., only one application may be submitted in the name of each person. There is no requirement that an applicant sign the registration request. Only one notification letter will be sent for each case registered, to the address provided on the application.

7. What Are the Requirements for an Offer of Employment in the United States?

An offer of employment should not be submitted as part of the registration application. Applicants who are successfully registered for AA–1 status will need to present an employment offer at the time of visa issuance. Applicants must submit evidence of a commitment for full-time employment in the U.S. at the visa interview. Two or more part-time jobs will meet this requirement if, taken together, they constitute full-time employment, as long as the applicant submits letters from each employer supporting the job offer. The offer may come from a business or any other institution or organization in the United States, or from a private individual. Evidence of existing self-employment in the United States can meet the offer of employment requirement; a plan to create one's own business in the future, even in the immediate future, would not qualify, however.

8. How Will Cases Be Registered?

All mail received will be individually numbered. After the end of the application period, a computer will randomly select cases from among all the mail received. The first letter randomly selected will be the first case registered, the second letter selected the second registration, etc. It makes no difference whether an application is received early or late in the application period. When a case has been registered, the applicant will immediately be sent a notification letter, which will provide appropriate visa application instructions. The registration will at the same time be forwarded to the consular

office which will process the case; all subsequent visa processing information will be obtained by the applicant directly from that consular office.

9. Will Applicants Who Are Not Registered Be Informed?

No, applicants who are *not* registered will receive no response to their registration request. Only those who are registered will be informed. All notification letters are expected to be sent within about three months of the end of the application period. Anyone who does not receive a letter will know that his/her application has not been registered.

10. How Many Applicants Will Be Registered?

A total of about 50,000 persons, both principal applicants and their spouses and children, will be registered. Since it is likely that some of the first 40,000 persons who are registered will not pursue their cases to visa issuance, this larger figure should ensure use of all AA–1 numbers, but it also risks some registrants' being left out. All applicants who are registered will be informed promptly of their place on the list. Each month visas will be issued, according to registration lottery rank order, to those applicants who are ready for visa issuance during that month. Once all of the fiscal year 1994 visas have been issued, the program for the year will end. Registered applicants who wish to receive visas must be prepared to act promptly on their cases.

The law specifies that at least 40% (i.e., 16,000) of each year's AA–1 visas are to be made available to natives of Ireland. Natives of Northern Ireland are entitled to benefit from the 40% of the AA–1 numbers provided for Ireland. So that Northern Ireland natives are properly identified during registration processing, they should show their area of birth as Northern Ireland on their application and envelope.

11. Is There a Minimum Age for Applicants for Registration Under the AA–1 Program?

There is NO minimum age for submission of an application for registration, but the requirement of a firm commitment of employment for each principal applicant at the time of visa issuance will effectively disqualify anyone who is under the legal working age.

12. Will There Be Any Special Fee for Registration in the AA–1 Category?

There is no fee for submitting a request for registration, and no fee should be included with the letter sent to the post office box indicated above. There will be a special fee of US $25,00 per case registered, however, to cover the cost of processing the AA–1 registrations. This fee will be collected by the consular office to which the case is sent for processing, when the applicant responds to the registration notification letter.

13. Are AA–1 Applicants Specially Entitled To Apply for a Waiver of Any of the Grounds of Visa Ineligibility?

The law states that, for AA–1 visa applicants, the Immigration and Naturalization Service shall waive the ground of visa ineligibility based on misrepresentation on an application for a visa or for entry into the U.S. (INA 212(a)(6)(C)), unless there is a finding that such waiver is not in the national interest. In addition, the law automatically waives the two year foreign residence requirement on certain former exchange visitor ("J") visa holders under INA 212(e). Also, the requirement for a labor certification (INA 212(a)(5)(A)) does not apply. In all other respects, persons registered under the AA–1 program must meet the standard eligibility requirements before a visa can be issued.

14. May Applicants Who Are Already Registered for an Immigrant Visa in Another Category Apply in This Registration for the AA–1 Category?

Yes, such persons may seek AA–1 status through this registration as well.

15. How Long Do Applicants Who Are Registered on the Basis of This Application Period Remain Entitled to Apply for Visas in the AA–1 Category?

Under the law, persons registered following this AA–1 application period are entitled to apply for visa issuance only during fiscal year 1994, i.e., from October 1993 through September 1994. There is *no* carry-over of benefit into another year for persons who are registered but who do not obtain visas during FY–1994.

Note: There is absolutely no advantage to mailing early, or mailing from any particular locale. Every application received during the mail-in period will have an equal random chance of being selected. However more than one application per person will disqualify the person from registration. Also, failure to include the applicant's native country and full name and address on the envelope will disqualify the application.

Dated: January 25, 1993.

James L. Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 93–2147 Filed 1–28–93; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 93–5]

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: January 25, 1993.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503. (202) 395–7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on January 25, 1993:

DOT No.: 3718.
OMB No.: 2120–0067.
Administration: Federal Aviation Administration.
Title: Air Taxi and Commercial Operator Airport Activity Survey.
Need for Information: Enplanement data collected from air taxi and commercial operators are needed for the calculation of air carrier airport sponsor apportionments as specified by the Airport and Airway Improvement Act of 1982 (AAIA), as amended.
Proposed Use of Information: The information is used to determine whether an airport is eligible for funds and for calculating primary airport sponsor apportionments as specified by the AAIA, as amended.
Frequency: Annually.
Burden Estimate: 2,002 hours.
Respondents: Businesses (commercial service airports).
Form(s): FAA Form 1880–31.
Average Burden Hours Per Response: 1 hour and 18 minutes.

DOT No.: 3719.
OMB No.: 2120–0005.
Administration: Federal Aviation Administration.
Title: General Operating and Flight Rules—FAR 91.
Need for Information: The information is collected to determine compliance with FAR 91 regulations.
Proposed Use of Information: The information is used by the FAA for certification, compliance and enforcement, and when accidents, incidents, reports of noncompliance, safety programs, or other circumstances require reference to records.
Frequency: On occasion.
Burden Estimate: 231,064 hours.
Respondents: Individuals and businesses operating under FAR 91.
Form(s): None.
Average Burden Hours Per Response: 30 minutes.

DOT No.: 3720.
OMB No.: 2115–0013.
Administration: U.S. Coast Guard.
Title: Application and Permit to Handle Hazardous Materials.
Need for Information: This information collection is needed by the Coast Guard to ensure that regulations are complied with under the Ports and Waterways Safety Act (33 U.S.C. 1225) in the safe handling and transporting of explosives and hazardous materials in port areas and on board vessels.
Proposed Use of Information: This information collection will be used to determine if safe practices are being followed in the stowage and handling of hazardous material. It will also enable Coast Guard to keep track and monitor all operations in the handling of hazardous materials.
Frequency: Annually.
Burden Estimate: 814 hours.
Respondents: Shipping agents and terminal operators.
Form(s): CG–4260.
Average Burden Hours Per Response: 1 hour for reporting; 12 minutes for recordkeeping.

DOT No.: 3721.
OMB No.: 2127–0040.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR part 551.45, Designation of Agent.
Need for Information: The information is needed to compile a list of designated agents representing foreign manufacturers who import vehicles into the United States.
Proposed Use of Information: The information will be used to advise foreign manufacturers of safety-related defects. Subsequently, the manufacturers can notify purchasers and correct the defects.
Frequency: On occasion.
Burden Estimate: 13 hours.
Respondents: Manufacturers.
Form(s): None.
Average Burden Hours Per Response: 30 minutes.

DOT No: 3722.
OMB No: 2137–0584.
Administration: Research and Special Programs Administration.
Title: Gas and Hazardous Liquid Pipeline Safety Program Certification/ Agreement.
Need for Information: The information is needed to determine state compliance with the terms of the pipeline safety program certification/ agreement.
Proposed Use of Information: The information will be used to calculate state grant allocations and to prepare an annual report to Congress on the pipeline safety program.
Frequency: Annually.
Burden Estimate: 3,556 hours.
Respondents: State public service commissions or equivalents.
Form(s): Gas Pipeline Safety Program 5(a) Certification; Gas Pipeline Safety Program 5(b) Agreement; Hazardous Liquid Pipeline Safety Program 205(a) Certification; Hazardous Liquid Pipeline Safety Program 205(b) Agreement
Average Burden Hours Per Response: 28 hours for reporting; 91 hours for recordkeeping.

DOT No: 3723.
OMB No: 2115–0054.
Administration: U.S. Coast Guard.
Title: Welding and Hot Work Permit.
Need for Information: This information collection is needed by the Coast Guard to ensure that safety regulations are complied with when using welding or hot works equipment at waterfront facilities.
Proposed Use of Information: This information will be used by the Coast Guard to issue permits to facilities engaging in welding, cutting or other hot works activities.
Frequency: On occasion.
Burden Estimate: 2,190 hours.
Respondents: Owners/operators of vessels and waterfront facilities.
Form(s): CG–4201.
Average Burden Hours Per Response: 30 minutes for reporting; 30 minutes for recordkeeping.

DOT No: 3724.
OMB No: 2115–0142.
Administration: U.S. Coast Guard.
Title: 46 CFR Subchapter F—Plan Approval and Records for Marine Engineering Systems.
Need for Information: This information collection is needed by the Coast Guard to ensure that construction, arrangement and equipment of vessels are in compliance with the applicable regulations.
Proposed Use of Information: This information collection will be used by the Coast Guard to determine that the minimum standards and technical requirements are met.
Frequency: On occasion.
Burden Estimate: 1,284 hours.
Respondents: Vessel owners and builders.
Form(s): None.
Average Burden Hours Per Response: 18 minutes.

DOT No.: 3725.
OMB No.: 2115–0556.
Administration: U.S. Coast Guard.
Title: Reports of MARPOL 73/78 Discharge Violations, Application for Equivalents, Exemptions and Alternatives and Voluntary Reports of Pollution Sightings.
Need for Information: This information collection is needed to require the master or other person in charge of a ship to report pollution sightings that violate statutory requirements. These sightings will be reported to the Coast Guard in order for an appropriate response to be taken, and to facilitate enforcement of MARPOL 73/78 and its implementing laws and regulations.
Proposed Use of Information: Coast Guard will use this information to:
(1) Determine if any corrective action is required to prevent, minimize or

mitigate the impact of pollutants discharged from ships;

(2) Evaluate applications from persons desiring relief from certain regulatory requirements involving pollution; and

(3) Encourage voluntary reporting of the existence or discharge of oil or other hazardous substance spill sightings.

Frequency: On Occasion.

Burden Estimate: 15 hours.

Respondents: Ship operators.

Form(s): None.

Average Burden Hours Per Response: 26 minutes.

DOT No.: 3726.

OMB No.: 2115–0548.

Administration: U.S. Coast Guard.

Title: Vital System Automation, 46 CFR parts 52, 56, 58, 61, 62, 110, 111, and 113.

Need for Information: This information collection requirement is needed to ensure: (1) The safety of life at sea; and (2) that U.S.-flag vessels conform to the automation regulations of the International Convention for the Safety of Life at Sea.

Proposed Use of Information: Coast Guard will use this information to determine compliance with safety regulations and to evaluate the necessary manning consistent with the safe operation of automated vessels.

Frequency: On occasion.

Burden Estimate: 630 hours.

Respondents: Vessel designers, shipyards, manufacturers, owners and crew members.

Form(s): None.

Average Burden Hours Per Response: 58 hours for reporting; 50 hours for recordkeeping.

DOT No.: 3727.

OMB No.: 2120–0514.

Administration: Federal Aviation Administration.

Title: Aviation Insurance.

Need for Information: To provide aviation insurance in emergency situations in which the President has determined there is a foreign policy need for the continuation of international air services and the FAA Administrator has determined that aviation insurance is not available on reasonable terms and conditions from commercial sources.

Proposed Use of Information: The information is used to determine the reasonableness of the terms and conditions on which commercial insurance is available and assess the risks for which insurance coverage is being sought.

Frequency: One time.

Burden Estimate: 28 hours.

Respondents: Businesses.

Form(s): None.

Average Burden Hours Per Response: 5 hours for application; 1 hour and 30 minutes for endorsements.

Issued in Washington, DC on January 25, 1993.

Cynthia C. Rand,

Director of Information Resource Management.

[FR Doc. 93–2191 Filed 1–28–93; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings; Agreements Filed During the Week Ended January 22, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48607

Date filed: January 21, 1993

Parties: Members of the International Air Transport Association

Subject: Telex TC2 Mail Vote 614, Europe-Middle East family fares

Proposed Effective Date: February 15, 1993.

Docket Number: 48608

Date filed: January 21, 1993

Parties: Members of the International Air Transport Association

Subject: Telex Comp Mail Vote 609, Fares to/from Algeria

Proposed Effective Date: February 1, 1993.

Docket Number: 48609

Date filed: January 21, 1993

Parties: Members of the International Air Transport Association

Subject: Telex TC1 Mail Vote 613, TC1 Standard Revalidation Resolution

Proposed Effective Date: April 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–2177 Filed 1–28–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In December 1992, there were 13 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Virgin Islands Port Authority, Charlotte Amalie, St. Thomas, Virgin Islands.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,871,005.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: February 1, 1995.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose Only: Airfield improvements (runway completion), Aircraft rescue and firefighting (ARFF) facility building.

Brief Description of Projects Approved in Part For Collection: Install airport security system.

Determination: This approval represents a decrease in the requested amount due to lower project costs. Airfield improvement (runway resurfacing).

Determination: The amount of approved PFC revenue reflects a decrease from the requested amount. This reduction limits the approved PFC amount based on the total amount of alternate project revenue approved. This project was chosen for the reduction due to its starting date for implementation and the nature of the project, which readily allows for phasing.

Brief Description of Project Disapproved for Collection: ARFF equipment.

Determination: The public agency did not provide information to show that the project is justified based on part 139 requirements. As such, the FAA is unable to determine that the project is Airport Improvement Program (AIP) eligible as required by § 158.15(b). Therefore, this project is not PFC eligible.

Decision Date: December 8, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Virgin Islands Port Authority, Christiansted, St. Croix, Virgin Islands.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $2,280,465.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: May 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose Only: Master plan update, Airfield improvement (apron expansion).
Brief Description of Projects Approved in Part For Collection: Real property acquisition, Airport security system.
Determination: This approval represents a decrease in the requested amount due to lower project costs. Passenger terminal improvements.
Determination: The amount of approved PFC revenue reflects a decrease from the requested amount. This reduction limits the approved PFC to the amount of funding needed to provide for the preparation of conceptual and final design plans for this project. The reduced scope of this approval provides the opportunity for the public agency to fully justify the project and determine eligible costs associated with its construction.
Brief Description of Project Disapproved for Collection: ARFF equipment.
Determination: The public agency did not provide information to show that the project is justified based on Part 139 requirements. As such, the FAA is unable to determine that the project is AIP eligible as required by § 158.15(b). Therefore, this project is not PFC eligible.
Decision Date: December 8, 1992.
For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Indian Wells Valley Airport District, Inyokern, California.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $127,500.
Earliest Permissible Charge Effective Date: March 1, 1993.
Duration of Authority to Impose: September 1, 1995.
Class of Air Carriers Not Required to Collect PFC'S: None.
Brief Description of Projects Approved to Impose and Use: Land acquisition, Pave airport drive, Overlay runway 15/33.
Brief Description of Project Approved to Impose Only: Terminal renovations.
Brief Description of Projects Withdrawn: Overlay runway 10/28, Construct run-up pads.
Determination: The Indian Wells Valley Airport District withdrew these projects from its application by letter to the FAA dated November 24, 1992.
Decision Date: December 10, 1992.
For Further Information Contact: John P. Milligan, Western-Pacific Region Airports Division, (310) 297–1029.

Public Agency: County of Monroe, Key West, Florida
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $945,937.
Earliest Permissible Charge Effective Date: March 1, 1993.
Duration of Authority to Impose: December 1, 1995.
Class of Air Carriers Not Required to Collect PFC'S: None.
Brief Description of Projects Approved to Impose at Key West International Airport (EYW) and Use at EYW: Master stormwater study, Environmental assessment study, Terminal expansion project, Renovation of federal inspection services facility, Airfield signage.
Brief Description of Project Approved to Impose at EYW and Use at Marathon Airport (MTH): Terminal complex construction.
Brief Description of Project Disapproved: Development of regional impact/major conditional use study.
Determination: The disapproved amount, $10,000, represents the County of Monroe's request for PFC revenues to fund the local match of a proposed AIP project. The total project cost is $200,000. The County of Monroe requests AIP discretionary funding of $180,000. The FAA cannot commit to this level of discretionary funding at this time. Further, in preparing an impose and use application, the County of Monroe did not provide an alternative funding plan. Lacking any alternative to AIP discretionary funding for a significant portion of the project's financing, any approval to impose and use by the FAA would prejudice the FAA's future funding decision. Thus, the FAA cannot assure PFC revenue collected for use on the subject project could be used on approved projects, in the event AIP discretionary funding were not forthcoming. Master plan update.
Determination: The FAA cannot make an eligibility determination on this project because the County of Monroe has not defined the scope of the project.
Decision Date: December 17, 1992.
For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: County of Monroe, Marathon, Florida.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $153,556.
Earliest Permissible Charge Effective Date: March 1, 1993.
Duration of Authority to Impose: June 1, 1995.
Class of Air Carriers Not Required to Collect PFC'S: None.
Brief Description of Projects Approved to Impose and Use: Master stormwater study, Development of regional impact/major conditional use study, Construct new terminal building, Airfield signage, Clear runway 7–25 safety area, Install obstruction lights adjacent to runway 7–25.
Brief Description of Project Disapproved: Master plan update.
Determination: The FAA cannot make an eligibility determination on this project because the County of Monroe has not defined the scope of the project.
Decision Date: December 17, 1992.
For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Charlottesville-Albermarle Airport Authority, Charlottesville, Virginia.
Application Type: Use PFC Revenue.
PFC Level: $2.00.
Total Approved Net PFC Revenue: $255,559.
Charge Effective Date: September 1, 1992.
Duration of Authority to Impose: November 1, 1993.
Class of Air Carriers Not Required to Collect PFC's: Previously approved in June 11, 1992 decision.
Brief Description of Project Approved to Use PFC Revenue: Relocation of taxiway A.
Decision Date: December 21, 1992.
For Further Information Contact: Robert B. Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: County of Emmett, Pellston, Michigan.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $440,875.
Earliest Permissible Charge Effective Date: March 1, 1993.
Duration of Authority to Impose: June 1, 1998.
Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operations.
Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
Brief Description of Projects Approved to Impose and Use: Extend apron, Constructed heated sand storage building, Rehabilitate taxiway "G".
Brief Description of Project Approved to Impose Only: Rehabilitate taxiway

"A", Rehabilitate taxiway "B", Purchase physically challenged passenger loading device, Purchase snow removal equipment (broom), Rehabilitate medium intensity runway lights (MIRL) on runway 5/23, Construct blast pads on runway 14/32, Construct paved shoulders on runway 14/32, Rehabilitate and resurface runway 14/32.

Decision Date: December 22, 1992.

For Further Information Contact: Dean Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: City of Colorado Springs, Colorado Springs, Colorado.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $5,622,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: February 1, 1996.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose and Use: New terminal building—public areas, Aircraft apron and parking positions.

Brief Description of Project Disapproved: Taxiway C—southern portion.

Determination: This project is proposed to begin in 1997. This date exceeds the two-year requirement for project implementation contained in § 158.33(a)(1). Therefore, this project is disapproved for the imposition and use of PFC's.

Decision Date: December 22, 1992.

For Further Information Contact: Dakota L. Chamberlain, Denver Airports District Office, (303) 286–5537.

Public Agency: Valdosta-Lowndes County Airport Authority, Valdosta, Georgia.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $260.526.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: October 1, 1997.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose Only: Passenger terminal building.

Decision Date: December 23, 1992.

For Further Information Contact: Catherine M. Nelmes, Atlanta Airports District Office, (404) 994–5306.

Public Agency: County of Brown (County), Green Bay, Wisconsin.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00

Total Approved Net PFC Revenue: $8,140,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: March 1, 2003.

Class of Air Carriers not Required to Collect PFC'S: Part 135 air taxi/commercial operators.

Determination: Disapproved. Based on information submitted in the County's application and a letter, dated December 21, 1992, clarifying the names of air taxi/commercial operators notified, the proposed class accounts for less than 1 percent of Austin Straubel International Airport's (GRB) total annual enplanements. However, review of current fiscal year 1991 enplanement data shows that this class exceeds the 1 percent allowable in § 158.11 of the regulation and cannot be approved.

Brief Description of Project Approved to Impose and Use: Phase II terminal renovation and expansion.

Brief Description of Projects Approve to Impose Only: Taxiway C/M improvements, Taxiway D/K improvements, Construct stormwater management system, Phase III terminal renovation and expansion, Phase IV terminal renovation and expansion.

Decision Date: December 28, 1992.

For Further Information Contact: Franklin D. Benson, Minneapolis Airports District Office, (612) 725–4331.

Public Agency: Puerto Rico Ports Authority, Aguadilla, Puerto Rico.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,053,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: January 1, 1999.

Class of Air Carriers not required to Collect PFC'S: None.

Brief Description of Project Approved to Impose and Use: Terminal building expansion.

Decision Date: December 29, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Puerto Rico Ports Authority, Ponce, Puerto Rico.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $866,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: January 1, 1999.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose and Use: Terminal building expansion.

Decision Date: December 29, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Puerto Rico Ports Authority, San Juan, Puerto Rico.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $49,768,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: February 1, 1997.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose at Luiz Munoz Marin International Airport (SJU) and Use at SJU: New international terminal.

Brief Description of Projects Approved to Impose at SJU and Use at Mercedita Airport: Construct a 1,000-foot extension to runaway 12, Terminal building expansion.

Brief Description of Project Approved to Impose at SJU and Use at Rafael Hernandez Airport: Terminal building expansion.

Brief Description of Project Approved to Impose Only at SJU: Construct single crossfield taxiway.

Decision Date: December 29, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Issued in Washington, DC, on January 19, 1993.

Lowell Johnson,

Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Alabama					
Huntsville Intl-Carl T Jones Field, Huntsville	03/06/1992	3	$20,831,051	06/01/1992	11/01/2008
Muscle Shoals Regional, Mucle Shoals	02/18/1992	3	104,100	11/01/1992	02/01/1995
Arizona					
Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
California					
Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
Metroplitan Oakland International, Oakland	06/26/1992	3	8,736,000	09/01/1992	09/01/1993
Palm Spring Regional, Palm Springs	06/25/1992	3	44,612,350	10/01/1992	06/01/2019
San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	03/01/1993	02/01/1995
Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado					
Colorado Springs Municipal, Colorado Springs	12/22/1993	3	5,622,000	03/01/1993	02/01/1996
Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
Telluride Regional, Telluride	11/23/1992	3	200,000	02/01/1992	11/01/1997
Florida					
Southwest Florida Regional, Fort Myers	08/31/1992	3	257,673,262	11/01/1992	06/01/2015
Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1195
Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
Sarasota-Bradenton, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
Georgia					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho					
Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
Capital, Springfield	03/27/1992	3	682,306	06/01/1992	05/01/1994
Iowa					
Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
Louisiana					
Baton Rouge Metropolitian, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
Maryland					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan					
Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
Kent County, International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
Pellston Regional Airport of Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Minnesota					
Minneaplois-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi					
Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
Key field, Meridian	08/21/1992	3	122,50	11/01/1992	06/01/1994

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Missouri					
Lambert-St. Louis International, St. Louis	09/30/1992	3	131,453,450	12/01/1992	12/01/1997
Montana					
Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada					
McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
New Hampshire					
Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey					
Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York					
Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota					
Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Ohio					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
Oklahoma					
Lawton Municipal, Lawton	05/08/1992	3	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon					
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
Pennsylvania					
Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
Tennessee					
Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1992	02/01/2004
Texas					
Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
Virginia					
Charlottesville-Albemarle, Charlottesville	06/11/1992	3	255,559	09/01/1992	11/01/1993
Charlottesville-Albemarle, Charlottesville	12/21/1992	3	255,559	09/01/1992	11/01/1993
Washington					
Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia					
Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin					
Austin Straubel International, Green Bay	12/28/1993	3	8,140,000	03/01/1993	03/01/2003
Guam					
Guam International Air Terminal, Agana	11/10/1993	3	5,632,000	02/01/1993	06/01/1994

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date[1]
Puerto Rico					
Rafael Hernandez, Acuadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
Luis Munoz Marin International, San Juan	12/29/1993	3	49,768,000	03/01/1993	02/01/1997
Virgin Islands					
Cyril E. King, Charlottee Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
Alexander Hamilton Christiansted St Croix	12/08/1993	3	2,280,465	03/01/1993	05/01/1995

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 93–2159 Filed 1–28–93; 8:45 am]
BILLING CODE 4910–13–M

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Daytona Beach International Airport, Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dennis R. McGee, Airport Director of Volusia County, Florida at the following address: Volusia County, Florida, Daytona Beach International Airport, 700 Catalina Drive, Suite 300, Daytona Beach, Florida 32114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Volusia County, Florida under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Southern Region, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, Attn: Pablo G. Auffant, Civil Engineer, Telephone: (407) 648–6583.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation regulations (14 CFR part 158).

On January 20, 1993, the FAA determined that the application to impose and use a PFC submitted by Volusia County, Florida was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 20, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: May 1, 1993

Proposed charge expiration date: December 31, 2001

Total estimated PFC revenue: $11,242,218

Brief description of proposed project(s):

Impose and Use: Terminal Renovation for FIS Facility.

Impose Only: Land Aquisition for Aviation Development and Protection.

Extension of Runway 7L–25R and Taxiway November. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Volusia County, Florida.

Issued in Atlanta, Georgia on January 20, 1993.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 93–2160 Filed 1–28–93; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Cumberland, Hoke, and Robeson Counties, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Cumberland, Robeson, and Hoke Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposed new highway facility known as the Fayetteville Outer Loop (western and southern portions) in Cumberland, Hoke, and Robeson Counties of North Carolina. The proposed project would extend from the western termination point of the northern segment of the Fayetteville Outer Loop (X–2) near the All American Freeway (SR 1007), would pass through portions of the Fort Bragg Military Reservation, western and southern Cumberland County, eastern Hoke County, and northern Robeson County, and would end along I–95 south of Fayetteville, a distance of approximately 19 miles. The proposed project is needed to improve access and reduce congestion on the Fayetteville

urban roadway system and other roadway facilities in the area.

Alternatives under consideration include the (1) the "no-build"; (2) improve existing facilities; (3) transportation systems management; (4) mass transit; and (5) constructing a four-lane freeway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. Citizens informational workshops and meetings with local officials will be held in the study area. A public hearing will also be held. Public notice will be given of the time and place of the workshops, meetings, and hearing. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 21, 1993.

Roy C. Shelton,

Operations Engineer, FHWA Raleigh, North Carolina.

[FR Doc. 93–2137 Filed 1–28–93; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with title 49, Code of Federal Regulations, §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) received from Union Pacific Railroad (UPRR) a request for exemptions from or waivers of compliance with a requirement of the Federal rail safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Union Pacific Railroad, Waiver Petition, Docket Number RST–92–3

This notice covers the request of the Union Pacific Railroad (UPRR) to be relieved of compliance with § 213.57(b) of the track safety standards. That section refers to maximum allowable train operating speeds on non-tangent track as a function of existing curvature and superelevation and, further, introduces the concept of unbalanced superelevation in particular modes of train operation. The idea of trains negotiating curved track at speeds producing either positive or negative unbalance was discussed previously in the **Federal Register** (52 FR 38035 on October 13, 1987). Currently, § 213.57(b) accepts a maximum of three inches to be used as the underbalance term in the formulation of curve/speed tables by track maintenance engineers defining intermediate train speeds and curved track superelevations for any route between two points.

UPRR petitioned for permission to substitute the value of four inches instead of authorized three in determining maximum train speeds on several hundred route-miles of track owned by the railroad and used under contract by the National Railroad Passenger Corporation (Amtrak) in the provision of transcontinental passenger train service. UPRR is doing this to assist Amtrak in improving the intercity trip times of its passenger trains. UPRR is a freight-hauling railroad exclusively and, in the past, determined that it was in the railroad's best interest to operate freight trains at curving speeds developing not more than one and one/half inches of underbalance, a value well within the bound prescribed by the track standards. On the other hand, Amtrak would like to operate passenger trains, where possible, at the full three inches afforded by the standards. UPRR claims to have no objection to this curving speed differential considering the design and maintenance characteristics of transcontinental passenger cars compared with those of freight rolling stock.

The reason stated by UPRR for having submitted the petition is to gain some track maintenance flexibility without violating the track safety standards. UPRR claims to have no intention of operating freight trains in any speed regime that would leave that railroad vulnerable to nonconformance with § 213.57(b).

UPRR's petition is very detailed, e.g., every curve on the 19 subdivisions involved is listed in printout form presenting several of the features unique to each curve. A preliminary analysis of these data by FRA indicates that of the approximately 5500 curves involved, 150 would experience a speed increase in the order of five to ten miles per hour. Projected speed increases on a large majority of the 150 curves would still be less than the value required to produce three inches of underbalance. Only rarely do the speed increases exceed the values defining the three inch limit and then only by a few miles an hour.

Interested parties may submit written views, data, or comments on this petition. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket No. RST–92–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before March 8, 1993 will be considered by FRA before final action is taken. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on January 22, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–2198 Filed 1–28–93; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966 (the Act), as amended (15 U.S.C. 1381 et seq.).

Mrs. Linda J. Splayt submitted a petition, dated September 15, 1992, requesting that NHTSA initiate an investigation to determine whether certain component parts in 1989 Subaru Justy vehicles are defective within the meaning of the Act.

In her letter, the petitioner stated as one of the reasons for the petition:

> 48 out of 76 Justy vehicle complaints to NHTSA as of July 27, 1992 indicate a pattern of identical and related problems.

She also stated that her daughter was killed after being ejected through the

sunroof in an accident involving a 1989 Subaru Justy vehicle and that a passenger was injured.

The petitioner requested that NHTSA specifically investigate the following component parts for the 1989 Subaru Justy; brakes, transmission, computer system, suspension, power train, steering, loss of power, electrical system, fuel system, wheels, tires, seat belt retractor, seat back reclining lever and safety belt warning information. Mrs. Splayt provided no substantive evidence that defects exist in any of the named components.

A search of the agency's Fatal Accident Reporting System (a census of all fatal motor vehicle crashes) for calendar years 1988 through 1991 disclosed no reports of fatal ejection of belted occupants in 1989 Subaru Justy vehicles.

Among the various parts and systems listed in the petition, the brakes, steering, and transmission are most likely to be related to accident causation. The restraint system was also examined because the driver was ejected from the vehicle during the accident, and the passenger seat belt allegedly did not function properly. The remainder historically have been "nuisance" problems to the owner or driver. No indication of mechanical defect is provided in these complaints. A review of ten repair orders covering work performed on the petitioner's vehicle disclosed no reference to brake problems or brake lockup. In summary, the petitioner's complaint concerning the vehicle's brakes and the other brake complaints in the agency's file fail to demonstrate a safety-related defect.

The petitioner alleges a defect in the vehicle's steering system. She reports that her daughter's 1989 Justy "swerved," and she lost control of the vehicle. In the dealer's repair order for this vehicle, there is no mention of a previous problem of swerving or loss of steering control. The agency's complaint file contains one other report of swerving on a 1989 Justy. This complaint reports a problem when the vehicle is driven over steel gratings on bridges. At the time of the accident, the petitioner's vehicle was not being operated on a bridge or on steel gratings. The agency's database has one other steering related complaint on a 1988 Justy. The complaint alleges that a broken tie rod end caused a loss of control and an accident. However, that report further states that two independent metallurgists hired by the vehicle's operator found the tie rod to not be the cause of the accident and broke as a result of the impact of the accident. The petitioner's vehicle did not experience a broken tie rod. In summary, these reports do not provide evidence to indicate a defect trend associated with loss of steering control.

The Splayt car was one of 12,500 1989 Justy vehicles equipped with the electronically controlled variable speed automatic transmission (ECVT). There were six complaints concerning the ECVT in the agency's database. Three 1989 owners complained only of "transmission failure." One 1990 Justy owner complained that his transmission had "excess wear" and another 1990 owner complained that the transmission slips from "Drive" to "Neutral" at various speeds. Most of the complainants stated they were made aware of the problem either through increased noise or increased difficulty in shifting gears. None of the five complaints allege an accident or safety risk associated with the transmission problem. The remaining ECVT report was the petitioner's, with the complaint being: "The transmission would voluntarily downshift and the car could not be controlled. It would go wherever it wanted to—steering would be impaired and braking was difficult." A review of the dealership repair orders indicated that the dealer could not duplicate the problem, but that the transmission was replaced to remove any doubt.

The complaints concerning transmission problems do not demonstrate a connection between transmission failure and a safety consequence.

The front seat belts in the 1989 Subaru Justy are the three-point type with an emergency locking retractor. The agency encourages full use of the vehicle's seat belt system. No matter what kind of safety belt system the vehicle has, it must be buckled for maximum protection.

The petitioner requested the agency to investigate the seat belt retractor and seat belt warning information. Subaru has certified that the subject Justy vehicles meet all applicable safety standards. A review of the information provided Mrs. Splayt did not suggest a noncompliance to any safety standard. As required by Federal Motor Vehicle Safety Standard No. 208, the Owner's Manual contains information and diagrams concerning belt usage and the function of the seat belt warning light and chimes that warn the driver that the safety belt system is not buckled.

In 1989, the agency tested seat belt strength and belt anchorage strength of a 1989 Justy vehicle as part of its regular compliance testing program by means of a static test which applied a load of 5,000 lbs (2,270 kg) to the belt and anchor. The belt and anchor passed the test.

Analysis of all Subaru Justy complaints disclosed three complaints concerning the safety belt. One alleged that the safety belts spooled out during a combination of braking, accelerating, and turning prior to the collision. Another complaint alleged that the seat belt latch release plastic button was broken, but this was not in connection with a vehicle accident. The third complaint alleged that the belts do not properly retract when the buckle is released.

Consumer complaints concerning the remaining component parts listed by the petitioner do not indicate the existence of a safely-related defect.

The Tulsa, Oklahoma, official police traffic collision report covering the accident in which the petitioner's daughter was killed was reviewed by the agency. It contained a statement by a witness who said that the Splayt vehicle was travelling at 60 to 70 miles per hour (97 to 113 kilometers per hour) when the driver lost control. He further said that the car hit the center median, rolled four times and that the driver was ejected 30 feet (9 meters) straight up and landed on her head. The responding officer further commented: "* * * the driver looked off and then looked back to the car in front of her. The car in front had slowed or stopped. The driver took evasive action. She slammed on the brakes and swerved left. The car hit the center median. The car slid and flipped on the center median and the driver was ejected through the cloth sunroof. Passenger stayed in the car." The posted speed limit for the highway was 50 mph (80 kilometers per hour).

The collision report also indicated that the driver was not wearing a safety belt, but that the passenger was wearing the available safety belts. The passenger reportedly suffered minor injuries in the accident.

The manufacturer provided a copy of the Owner's Manual Supplement placed in each 1989 Subaru Justy that had the soft top sunroof installed. The supplement was prepared to acquaint the owner/driver with the operation and care of the sunroof, and to provide important safety information. The following is included in the text:

- "To avoid the risk of injury or loss of control, never drive the vehicle unless the top is securely locked in an open position or securely closed and latched. Never drive with the wind deflector in the down position.
- To avoid loss of vehicle control, never attempt to operate the sunroof when the vehicle is in motion.

• To minimize the risk of injury or death caused by ejection from the vehicle, make certain that everyone in the vehicle wears seat belts. Seat belts should also be worn at all times to prevent or reduce the severity of injury in a collision."

Based on the information available, no defect trend has been observed and identified for any components or devices in the subject vehicle which would cause the vehicle to go out of control upon sudden, hard application of the brakes. Analysis of the available information indicates an assortment of random complaints on a variety of areas of the vehicle with no pattern and no linkage to loss of vehicle control as alleged by the petitioner. Examination of the repair history of the vehicle and the circumstances of the accident fails to indicate that the subject vehicle displayed any defects that could have caused loss of control upon hard braking.

In consideration of the foregoing, NHTSA has concluded that there is not a reasonable possibility that an order for the notification and remedy of a safety-related defect would be issued at the conclusion of an investigation that the petition has requested. Under these circumstances, further commitment of agency resources does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93–492: 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 26, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–2193 Filed 1–28–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 25, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8834.
Type of Review: New collection.
Title: Qualified Electric Vehicle Credit.
Description: Form 8834 is used to compute an allowable credit for qualified electric vehicles placed on service after June 30, 1993. Section 1913(b) under Public Law 102–1018 created new section 30.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hours, 59 minutes.
Learning about the law or the form—30 minutes.
Preparing, copying, assembling, and sending the forms to the IRS—37 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,550 hours.
OMB Number: 1545–0112.
Form Number: IRS Form 1099–INT.
Type of Review: Extension.
Title: Interest Income.
Description: This form is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. It is used to verify that payees are correctly reporting their income.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 790,000.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 64,400,000 hours.
OMB Number: 1545–1304.
Regulation ID Numbers: INTL–941–86, INTL–656–87, and INTL–704–87 Final; INTL–656–87 Temporary.
Type of Review: Extension.
Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.
Description: The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions and deferred tax amounts.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions.
Estimated Number of Respondents: 6,750.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 6,750 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–2158 Filed 1–28–93; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 22, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1500–0027
Form Number: POD 1681
Type of Review: Extension
Title: Application for Payment of a Deceased Depositor's Postal Savings
Description: This form is required in cases of Deceased Postal Savings Depositor's with accounts of $50 or less. The form is used by relatives of the deceased depositors showing the relationship to the depositor and the date of depositor's death. The information helps to determine who is entitled to payment.
Respondents: Individuals or households
Estimated Number of Respondents: 150
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 38 hours

Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–2115 Filed 1–28–93; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 25, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0795
Form Number: IRS Form 8233
Type of Review: Extension
Title: Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual
Description: Compensation paid to nonresident alien (NRA) for independent personal service (i.e., as independent contractors) is generally subject to the 30 percent withholding or graduated rates. However, such compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption. Form 8233 is used to request the exemption. Withholding agent reviews form and accepts it or not and forwards the form to IRS, if agent accepted it.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 6,800
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 minutes
Learning about the law or the form—12 minutes
Preparing and sending the form to the IRS—41 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 9,044 hours
OMB Number: 1545–1221
Regulation ID Number: EE–147–87 Final
Type of Review: Extension
Title: Qualified Separate Lines of Business
Description: The affected public includes employers who maintain qualified retirement plans for their employees. The employer must furnish notice to IRS that the employer is treating itself as operating qualified separate lines of business. Where applicable, an employer may request a determination from IRS that such lines satisfy administrative scrutiny.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 743
Estimated Burden Hours Per Respondent: 3 hours, 55 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 2,907 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–2116 Filed 1–28–93; 8:45 am]

BILLING CODE 4830–01–M

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective February 1, 1993.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Assistant Commissioners, Regional Commissioners and senior executives in Inspection and the Office of the Commissioner are as follows:

Michael Dolan, Deputy Commissioner, Chairperson
Charles Brennan, Regional Commissioner, Mid-Atlantic Region
Thomas Coleman, Regional Commissioner, Western Region
C. Morgan Kinghorn, Jr., Assistant Commissioner (Finance)/Controller
Judy Van Alfen, Assistant Commissioner (Returns Processing)
Robert Wenzel, Assistant Commissioner (Collection)
Helen White, Assistant to the Commissioner (Equal Opportunity)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Michael P. Dolan,

Acting Commissioner.

[FR Doc. 93–2190 Filed 1–28–93; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 18
Friday, January 29, 1993

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 ELECTION COMMISSION

FEDERAL REGISTER NUMBER: 93–2209.

PREVIOUSLY ANNOUNCED DATE AND TIME:
Thursday, February 4, 1993, 10 a.m.
Meeting open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA:
Voting Age Population (VAP) Figures for the 1993 Texas Senate Special Election.

PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.
[FR Doc. 93–2275 Filed 1–27–93 2:14 pm]
BILLING CODE 6715–01–M

NATIONAL SCIENCE BOARD EXECUTIVE COMMITTEE

DATE AND TIME:

February 11, 1993 2:00 p.m. Open Session
February 12, 1993 9:30 a.m. Closed Session
February 12, 1993 10:15 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street NW., Room 540, Washington, DC 20550

STATUS:

Part of this meeting will be open to the public

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, February 11, 1993

Open Session (2:00 p.m.–3:30 p.m.)

1. Report of the NSB Commission and NSB Role

Friday, February 12, 1993

Closed Session (9:30 a.m.–10:15 a.m.)

2. Personnel/Staff Issues
3. Minutes of November 1992 Meeting
4. Grants and Contracts
5. Director's Report

Open Session (10:15 a.m.–10:45 a.m.)

6. Chairman's Report
7. Minutes of November 1992 Meeting
8. Director's Report
9. Other business/Adjourn

Marta Cehelsky,
Executive Officer.
[FR Doc. 93–2238 Filed 1–27–93; 11:10 am]
BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 1, 1993.

A closed meeting will be held on Friday, February 5, 1993, at 11:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, February 5, 1993, at 11:30 a.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272–2000.

January 27, 1993.

Jonathan G. Katz,
Secretary.
[FR Doc. 93–2329 Filed 1–27–93; 4:00 pm]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 18
Friday, January 29, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 910813 2323]

Administrative Exceptions and Favorable Consideration Treatment for Country Groups Q and Y; Revisions, Clarifications, and Corrections to the Commerce Control List

Correction

In rule document 92–30966 beginning on page 61259 in the issue of Thursday, December 24, 1992, make the following corrections:

Supplement No. 1 to § 799.1 [Corrected]

The following corrections are to Supplement No. 1 to § 799.1:

1. On page 61264, in the first column, in ECCN 2A19A, under **Requirements**, the last line should read "*GFW:* No".

2. On page 61280, in the third column, in ECCN 5B94F, in the Note, in the first line, "General License G-TEST" should read "General License G-DEST".

3. On page 61290, in the first column, in amendment 91, "OE" and "OA" should read "0E" and "0A" wherever they appear.

4. On the same page, in the same column, in ECCN 0E96G, in the heading, in the last line, "Category O" should read "Category 0".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 921107–2307]

Foreign Fishing; Groundfish of the Gulf of Alaska

Correction

In proposed rule document 92–29734 beginning on page 57982 in the issue of Tuesday, December 8, 1992, make the following corrections:

1. On page 57984, the caption "Preliminary ABCs * * * Apportioned To DAP" underneath Table 1 should have appeared as the heading to the table on page 57983 as follows: "TABLE 1 — Preliminary ABCs, Proposed TACs, One-Fourth TACs And DAPs Of Groundfish (Metric Tons) For The Western/Central (W/C), Western (W), Central (C), And Eastern (E) Regulatory Areas And In The West Yakutat (WYK), Southeast Outside (SEO), And Gulf-Wide (GW) Districts Of The Gulf of Alaska. Amounts Specified As Joint Venture Processing (JVP) And Total Allowable Level Of Foreign Fishing (TALFF) Are Proposed To Be Zero And Are Not Shown In This Table. Reserves Are Proposed To Be Apportioned To DAP."

2. On page 57988, in the 2d column, in the 33d line, "Regulatory Areas' " should read "Regulatory Areas;".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–943–4210–05; IDI–17811C]

Order Providing for Opening of Public Land; Idaho

Correction

In notice document 93–253 appearing on page 3042 in the issue of Thursday, January 7, 1993, in the second column, under T. 2 N., R. 3 W. where it first appears, under Sec. 28, in the second line, "S½NE¼NW¼," should read "S½NW¼NW¼,".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 118, 151 and 178

[T.D. 93–6]

RIN 1515–AB10

Centralized Examination Stations

Correction

In rule document 93–1494 beginning on page 5596 in the issue of Friday, January 22, 1993, make the following corrections:

1. On page 5600, in the second column, in the first full paragraph, in the second line, insert "exempt" between "to" and "existing".

2. On page 5602, in the first column, in the first full paragraph, in the eighth line, "unloading" should read "unlading".

3. On page 5603, in the third column, in the first paragraph, in the first line, "test" should read "text".

§ 118.0 [Corrected]

4. On page 5604, in the second column, in § 118.0, in the third line, "person" should read "persons".

§ 118.11 [Corrected]

5. On page 5605, in the third column, in § 118.11(e), in the sixth line, insert a semi-colon after "selection".

Subpart C [Corrected]

6. On page 5606, in the first column, in the heading for Subpart C, "Terminations" should read "Termination".

§ 118.21 [Corrected]

7. On the same page, in the same column, in § 118.21(a)(2), in the ninth line, "his official duties or operator" should read "his official duties as operator".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 602

[T.D. 8442]

RIN 1545–AO97; 1545–AQ04

Procedural Rules for Excise Taxes Currently Reportable on Form 720

Correction

In rule document 92–25429 beginning on page 48174 in the issue of Thursday, October 22, 1992, make the following corrections:

§ 40.0–1 [Corrected]

1. On page 48177, in the second column, in § 40.0–1(b), in the second line, "for" should read "to a".

2. On the same page, in the same column, in § 40.0–1(e), in the third line, "to" should read "or".

§ 40.6071(a)–2 [Corrected]

3. On page 48178, in the second column, in § 40.6071(a)–2(a), in the first line, "return" should read "returns".

§ 40.6302(c)–0 [Corrected]

4. On page 48179, in the first column, in § 40.6302(c)–0, in the second line, "40.6302–2(c)–1" should read "40.6302(c)–2".

§ 40.9999–1 [Corrected]

5. On page 48184, in the second column, in § 40.9999–1, in Example 3, in paragraph (3), in the ninth line, insert "is" between "1991" and "as".

§ 602.101 [Corrected]

6. On page 48187, in the 2d column, in § 602.101, in the 24th entry, under the "Current OMB control number" for 48.6302(c)–1, add "1545–0257" beneath "1545–0023".

BILLING CODE 1505–01–D

federal register

Friday
January 29, 1993

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB91

Endangered and Threatened Wildlife and Plants: Proposed Determination of Critical Habitat for the Colorado River Endangered Fishes: Razorback Sucker, Colorado Squawfish, Humpback Chub, and Bonytail Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to designate critical habitat for four species of endemic Colorado River Basin fishes: Razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*). These species are listed as endangered under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Historically, these four species occurred throughout the Colorado River system from Wyoming to Mexico. The Service is under court order to publish a proposed rule for critical habitat for the razorback sucker by January 25, 1993, using presently available information.

The Service proposes to designate a total of 3,370 kilometers (2,094 miles) of critical habitat for the four Colorado River endangered fishes. There is considerable overlap in areas designated for the four species. The designation for all four species includes portions of Colorado, Utah, New Mexico, Arizona, Nevada, and California. The Service proposes 2,935 kilometers (1,824 miles) of critical habitat for the razorback sucker (52 percent of its historical range); 1,843 kilometers (1,148 miles) for the Colorado squawfish (29 percent of the historical range); 610 kilometers (379 miles) for the humpback chub (28 percent of the historical range); and 544 kilometers (344 miles) for the bonytail chub (15 percent of the historical range).

This proposed critical habitat designation, when made final, would result in additional consultation and conference requirements under section 7 of the Act with regard to Federal agency actions which are likely to destroy or adversely modify critical habitat. The Service is soliciting data and comments from the public on all aspects of this proposal, including information on the impacts and benefits of the designation.

DATES: Comments on this proposed rule will be accepted until March 30, 1993.

ADDRESSES: Information, comments, or questions concerning this proposed rule may be submitted to the Utah State Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Utah State Supervisor, at the above address, telephone 801/975–3630.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) has had limited time to prepare a proposed rule. Because of this, an economic analysis, a biological support document, and a complete evaluation of the effects of the critical habitat designation are not now available. The economic analysis and a biological support document are currently in preparation. Once completed, a notice will be published in the **Federal Register**, announcing their availability and the dates and locations of public hearings. A comment period will follow publication of the documents; this will allow public review of the economic analysis and the biological support document. The Service will hold public hearings on this proposed rule in Phoenix, Arizona; Denver, Colorado; and a site to be determined in southern California. The dates and specific locations for these hearings will be published in the **Federal Register** at least 15 days prior to the first hearing. Any determinations on exclusions of areas proposed as critical habitat will be published in the final rule.

The biological support document will contain detailed discussion of the process used to select critical habitat reaches. This will include a summary of known life history and ecological requirements for these species, presentation of the information used to develop the primary constituent elements, and a discussion of the biologicial basis for selection of proposed river reaches. Additionally, a discussion of activities which affect or may be affected by critical habitat designation will be included.

The economic analysis will contain an evaluation of costs and benefits resulting from this proposed designation. The information that will be contained in the economic analysis are detailed under the "Considerations of Economic and Other Factors" section within this document. The economic analysis will be used by the Service during the exclusion prosess. The exclusion process will determine whether the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat unless it is determined that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Background

The Colorado River Basin (Basin) encompasses portions of seven Western States. The Upper Basin consists of portions of the States of Colorado, New Mexico, Utah, and Wyoming. The Lower Basin consists of portions of the States of Arizona, California, and Nevada. The Basin drains approximately 627,000 square kilometers (242,000 square miles) within the United States. An additional 5,000 square kilometers (2,000 square miles) of the Basin lies within Mexico.

Historically, the native fish fauna of the mainstream Colorado River was dominated by native minnows (cyprinids) and suckers (catostomids; Minckley et al. 1986). However, four of these, the razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*), are now listed as endangered species. These fishes are threatened with extinction due to the combined effects of habitat loss (including regulation of natural flow, temperature, and sediment regimes); proliferation of introduced fishes; and other man-induced disturbances (Miller 1961; Minckley 1973; U.S. Fish and Wildlife Service (USFWS) 1987; Carlson and Muta 1989).

Native Colorado squawfish stocks survive only in the Upper Basin, where their numbers are relatively high only in the Green River basin of Utah and Colorado (Tyus 1991). Razorback sucker and bonytail chub stocks consist predominately of old adult fish, and they remain only because of the longevity inherent in these species (USFWS 1990a; Minckley et al. 1991). Humpback chub populations in the Little Colorado River and at Black Rocks in the Colorado River appear relatively stable in number of fish, but declines have been apparent in other locations (USFWS 1990b).

Conservation of these four species will require the identification and management of water resources and habitat areas that are considered important to any fish species, such as spawning areas and nursery grounds. However, because the four endangered fishes are present in such low numbers,

basic life history information and habitat use has been difficult to obtain. Some areas used by Colorado squawfish and razorback sucker for spawning have been detected by radiotracking, tagging, and collection of eggs or larvae (Tyus and Karp 1990; Tyus 1990), but these areas support the largest riverine concentrations of these species. Such information is less available in places where these species are more rare, and the low numbers or lack of young for some species have lead to hypotheses about a lack of reproduction and/or recruitment as a possible cause of their endangerment (USFWS 1990a, 1990b, 1991). In this case, not only would a lack of successful recruitment lead to small numbers of fish, but over time, remnant stocks may lose genetic diversity. Ultimately, extinction could result because the loss of genetic diversity may make populations more susceptible to environmental change.

The historical ranges of the four endangered species have been fragmented by construction of dams and water diversions throughout the Basin (Carlson and Muth 1989). The Service believes that it is important to the survival and recovery of these species to reestablish populations in areas within their former range. Providing geographically distinct areas that contain varying thermal, chemical, geological, and physical parameters will encourage maintenance of the current genetic pool. These parameters influence important life history characteristics such as time of spawning, recruitment, growth, mortality rates, and longevity.

Habitats and Status of Endangered Fishes

General

The four endangered Colorado River fishes evolved in the Colorado River and were adapted to the natural environment that existed prior to the beginning of large-scale water development. Thus, they were adapted to a system of fluctuating seasonal and annual flows influenced by wet, average, and dry climatic periods. Recent population declines and disappearances of endemic fish species in much of their former range have been associated with relatively rapid and widespread anthropogenic changes. These changes have altered the physical and biological characteristics of many mainstream rivers in the Basin and occurred so rapidly that the fishes have not had time to adapt to them (Carlson and Muth 1989). Dams and diversions have fragmented former fish habitat by restricting fish movement. As a result, genetic interchange (emigration and immigration of individuals) between some fish populations is nonexistent. Large floods were once normal in the Basin and provided food and nutrient exchange between river channels and shallow-water floodplain habitats. These floods are now controlled by numerous dams. As a result of these dams, major changes also have occurred in water quality, quantity, temperature, sediment and nutrient transport, and other characteristics of the aquatic environment (Carlson and Muth 1989). The altered habitats that have resulted are now more suitable for introduced, nonnative fishes, some of which have flourished (Minckley et al. 1982; Tyus et al. 1982; Carlson and Muth 1989). These changes have greatly altered the river environment and little or no unaltered habitat remains in the Basin for the four Colorado River endangered fish species addressed in this proposed rule. Additional detail on the status and life histories of these species will be provided in the biological support document.

Razorback Sucker

This species was once one of the most abundant and widely distributed fish in mainstream rivers of the Colorado River (Jordan and Evermann 1896; Minckley 1973). A relatively large stock of razorback suckers remain in Lake Mohave (Minckley et al. 1991). However, the formerly large Lower Basin populations have been extirpated from all natural riverine environments, and recruitment is virtually nonexistent in the remnant stocks (Minckley et al. 1991). In the Upper Basin, the fish persists in the lower Yampa and Green Rivers, mainstream Colorado River, and lower San Juan River (Tyus et al. 1982; Minckley et al. 1991; Platania et al. 1991), but there is little indication of recruitment in these remnant stocks. The largest extant riverine population occurs in the upper Green River Basin, but it consists of only about 1,000 fish (Lanigan and Tyus 1989). In the absence of conservation efforts, it is presumed that wild populations will be lost as old fish die and are not replaced.

Reproduction and habitat use of razorback suckers has been studied in lower basin reservoirs, especially in Lake Mohave. Fish reproduction has been visually observed in reservoir shorelines for many years, and spawning in the reservoir usually lasts from January or February to April or May. The fish spawn over mixed substrates that range from silt to cobble, and at water temperatures ranging from 10.5 to 21 degrees Celsius (reviewed by Minckley et al. 1991).

Habitat use and spawning behavior of adult razorback suckers in riverine habitats have been studied by radiotelemetry in the Green River Basin (Tyus and Karp 1990). The fish there spawned in the spring with rising water levels and increasing temperatures. The fish moved into flooded areas in early spring, and they made spawning migrations to specific locations as they became reproductively active. Spawning occurred over rocky runs and gravel bars.

In nonreproductive periods, adult razorback suckers occupy a variety of habitat types. These include impounded and riverine areas and habitats represented by: Eddies, backwaters, gravel pits, flooded bottoms and the flooded mouths of tributary streams, slow runs, sandy riffles, and others (reviewed by Minckley et al. 1991). Summer habitat use included deeper eddies, backwaters, holes, and midchannel sandbars (Tyus and Karp 1990; Minckley et al. 1991).

Habitats used by young razorback suckers have not been fully evaluated because of the low number of young fish present in the river system. However, most studies agree that the larvae prefer shallow, littoral zones for a few weeks after hatching, then they disperse to deeper water areas (reviewed by Minckley et al. 1991). Laboratory studies indicated that, in a riverine environment, the larvae enter stream drift and are transported downstream (Paulin et al. 1989).

During winter, adult razorback suckers utilize main channel habitats that are similar to those used during other times of the year, including eddies, slow runs, riffles, and slackwaters (Valdez and Masslich 1989; Tyus and Karp 1990).

Although habitat use of razorback suckers has been studied for years, the habitat preferences and factors limiting their abundance in native riverine habitats are not well known because of the scarcity of extant populations (Minckley 1983; Lanigan and Tyus 1989) and the absence of younger life history stages (Minckley et al. 1991). However, based on available data taken from the Green River, Tyus and Karp (1989) considered low winter flows, high spring flows, seasonal changes in river temperatures, and inundated shorelines and bottomlands as factors that potentially limit the survival, successful reproduction, and recruitment of this species.

Colorado Squawfish

This species is the only living representative of the genus *Ptychocheilus* in the Basin, where it is

endemic. Its origins there predate recorded history, but by the mid-Pliocene epoch (about 6 million years ago) fossils indicate that early *Ptychocheilus* had riverine adaptations that were similar to modern forms. During the Pleistocene epoch (about 1 million years ago), an earlier wet climate was interrupted by periods of desert conditions (M. Smith 1981). It has been hypothesized that the migrations reported for Colorado squawfish are a perfect life history strategy for the survival of a large predaceous fish in the historic Colorado River environment (G. Smith 1981; Tyus 1986, 1990). During the spawning season, adult Colorado squawfish have been known to migrate up to 320 kilometers (200 miles) upstream or downstream to reach spawning areas (Tyus 1990).

During winter, adult Colorado squawfish in the Yampa River use backwaters, runs, and eddies, but are most common in shallow, ice-covered shoreline areas (Wick and Hawkins 1989). In spring and early summer, adult squawfish utilized shorelines and lowlands that were inundated during typical spring flooding, and this natural lowland inundation was viewed as important for their general health and reproductive conditioning (Tyus 1990). Use of these habitats may mitigate some of the effects of winter stress and aid in offsetting a large energy expenditure required for migration and spawning. Migration is an important component in the reproductive cycle of Colorado squawfish, and Tyus (1990) reported that migration cues, such as high spring flows, increasing river temperatures, and possible chemical inputs from flooded lands and springs, were important to successful reproduction.

Colorado squawfish spawn in white water canyons in the Yampa and Green Rivers. This reproduction was associated with declining flows in June, July, or August, and average water temperatures ranging from 22–25 degrees Celsius depending on annual hydrology. After spawning, adult Colorado squawfish utilized a variety of riverine habitats, including eddies, backwaters, shorelines, and others (Tyus 1990). Specific spawning sites of Colorado squawfish have not been identified outside of the Green River Basin. In the mainstream Colorado River, McAda and Keading (1991) suggested that Colorado squawfish spawning may have been adversely impacted by construction of mainstream dams and a 48 percent reduction in peak discharge.

In the Green River Basin, larval Colorado squawfish emerge from spawning substrates and enter the stream drift as young fry (Haynes et al. 1989). The fish are then actively or passively transported downstream for about 6 days, and they may travel average distances of up to 160 kilometers (100 miles) to reach nursery areas (Tyus and Haines 1991). These areas are productive habitats that consist of ephemeral alongshore embayments that develop as spring flows decline. Such habitat is associated with lower gradient reaches.

Humpback Chub

Humpback chub remains have been dated to about 4000 B.C., but the fish was not described as a species until recent times (Miller 1946). This recent discovery has been attributed to its restricted distribution in remote, white water canyons (USFWS 1990b), and its earlier abundance and distribution is not well known. The largest populations of this species occur in the Little Colorado and Colorado Rivers in the Grand Canyon, and in the Black Rocks area of the Colorado River. Other populations have been reported in Westwater and Debeque Canyons of the Colorado River, Desolation and Gray Canyons of the Green River, and Yampa and Whirlpool Canyons in Dinosaur National Monument (USFWS 1990b).

Populations of humpback chub are found in river canyons, where they utilize a variety of habitats, including pools, riffles, and eddies. Most of the existing information on habitat preferences has been obtained from adult fish in the Little Colorado River, the Grand Canyon, and the Black Rocks of the Colorado River (Holden and Stalnaker 1975; Kaeding and Zimmerman 1983; Kaeding et al. 1990). In these locations, the fish are found associated with boulder-strewn canyons, travertine dams, pools, and eddies. Some habitat-use data are also available from the Yampa River Canyon where the fish occupy similar habitats, but also use rocky runs, riffles, rapids, and shoreline eddies (Karp and Tyus 1990). This diversity in habitat use suggests that the adult fish is adapted to a variety of habitats, and studies of tagged fish indicated that they move between habitats, presumably in response to seasonal habitat changes and life history needs (Kaeding and Zimmerman 1983; Karp and Tyus 1990). Spring peak flows, availability of shoreline eddy and deep canyon habitats, and competition and predation by nonnative fishes were reported as potential limiting factors for humpback chub in the Yampa River (Tyus and Karp 1989).

Humpback chub in reproductive condition are usually captured in May, June, and July, depending on location. Little is known about their specific spawning requirements, other than the fish spawn soon after the highest spring flows when water temperatures approach 20 degrees Celsius (Karp and Tyus 1990; USFWS 1990b). The importance of spring flows and proper temperatures for humpback chub is stressed by Kaeding and Zimmerman (1983), who implicated flow reductions and low water temperatures in the Grand Canyon as factors curtailing successful spawn of the fish and increasing its competition with other species.

Bonytail Chub

The bonytail chub is the rarest native fish in the Colorado River. Formerly reported as widespread and abundant in mainstream rivers (Jordan and Evermann 1896), its populations have been greatly reduced. The fish is presently represented in the wild by a low number of old adult fish (i.e., ages of 40 years or more) in Lake Mohave and perhaps other lower basin reservoirs (USFWS 1990a). The fish were once common in Lake Mohave and Wagner (1955) observed the fish in eddy habitats. A few individuals were reported in other locations, but concentrations of the fish have not been recently reported (Kaeding et al. 1986).

The bonytail chub always has been considered a species that is adapted to mainstream rivers, where it has been observed in pools and eddies (Minckley 1973; Vanicek 1967). In reservoirs, the fish occupies an active limnetic niche (Minckley 1973). Spawning of the fish never has been observed in nature, but Vanicek and Kramer (1969) reported that spawning occurred in June and July at water temperatures of about 18 degrees Celsius. Although wild bonytails are old fish, they are still capable of successful reproduction, and bonytail chubs placed in ponds have produced large numbers of young (B. Jensen, Fish and Wildlife Service, pers. comm.; USFWS 1990a). Although habitats that are required for conservation of the bonytail chub are not well known, the limited data suggests that flooded, ponded, or even inundated riverine habitats may be suitable for adults, especially in the absence of competing nonnative fishes (USFWS 1990a).

Previous Federal Actions

The Colorado squawfish and humpback chub were listed as endangered species on March 11, 1967 (32 FR 4001). The bonytail chub was

listed as endangered on April 23, 1980 (45 FR 27713). Critical habitat for these species was not designated at the time of their listing. On May 16, 1975, the Service published a notice of its intent to determine critical habitat for the Colorado squawfish and the humpback chub, as well as numerous other species that are not found in the Colorado River (40 FR 21499). On September 14, 1978, the Service proposed critical habitat for the Colorado squawfish (43 FR 41060). The proposal was for 1,002 kilometers (623 miles) of the Colorado, Green, Gunnison, and Yampa Rivers. This proposal was later withdrawn (44 FR 12382; March 6, 1979) to comply with the 1978 amendments to the Act (16 U.S.C. 1531 *et seq.*).

The razorback sucker was first proposed for listing as a threatened species on April 24, 1978 (43 FR 17375). The proposal was withdrawn on May 27, 1980 (45 FR 35410), in accordance with provisions of the 1978 amendments to the Act. These provisions required the Service to include consideration of designating critical habitat in the listing of species, to complete the listing process within 2 years from the date of the proposed rule, or withdraw the proposal from further consideration. The Service did not complete the listing process within the 2-year deadline.

On March 15, 1989, the Service received a March 14 petition to list the razorback sucker as endangered from the Sierra Club, National Audubon Society, The Wilderness Society, Colorado Environmental Coalition, Southern Utah Wilderness Alliance, and Northwest Rivers Alliance. The Service made a positive finding in June 1989, and subsequently published a notice in the **Federal Register** on August 15, 1989 (54 FR 33586). This notice also stated that the Service was completing a status review and was seeking additional information until December 15, 1989. A proposed rule to list the razorback sucker as endangered was published in the **Federal Register** on May 22, 1990 (55 FR 21154).

The final rule designating the razorback sucker as an endangered species was published on October 23, 1991 (56 FR 54957). Critical habitat was not designated. In the final rule, the Service concluded that critical habitat was not determinable at the time of listing and questioned whether it was prudent to designate critical habitat.

On October 30, 1991, the Service received a 60-day notice of intent to sue from the Sierra Club Legal Defense Fund. The subject of the notice was the Service's failure to designate critical habitat concurrent with listing of the razorback sucker pursuant to section 4(b)(6)(c). This was followed by a second notice of intent to sue dated January 30, 1992. On December 6, 1991, the Service concluded that designation of critical habitat was prudent and determinable, and therefore critical habitat for the razorback sucker should be designated. Because the intent of the Act is "* * * to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * *", the Service also decided to propose critical habitat for the Colorado squawfish, humpback chub, and bonytail chub. The four endangered Colorado River fish species coexist in the Basin and much of their habitat overlaps.

On May 7, 1992, the Sierra Club Legal Defense Fund filed a lawsuit in the U.S. District Court (Court), Colorado, on behalf of the Colorado Wildlife Federation, Southern Utah Wilderness Alliance, Four Corners Action Coalition, Colorado Environmental Coalition, Taxpayers for the Animas River, and Sierra Club. On August 18, 1992, a motion for summary judgment was filed which requested the Court to order a final rule designating critical habitat within 90 days. In the lengthy declarations filed with the response in opposition to the motion, the Service explained that the complex analyses, which were legally required for designating critical habitat, could not be completed until September 1993. This was due to the difficulty in determining the biological needs of the fish, conducting an economic analysis for portions of seven Western States (the large geographic area involved), and compiling biological and hydrological data. On October 27, 1992, the Court ruled that the Service had violated the Act in failing to designate critical habitat when the razorback sucker was listed. The Court ordered the Service to publish a proposed rule within 90 days designating critical habitat for the razorback using presently available information and to publish a final rule at the earliest time permitted by the Act and its regulations.

The biological information needed to define the physical and biological needs of these species and to propose areas for designation as critical habitat has been assimilated by the Service. Additionally, information about the activities which may affect critical habitat or be affected by the designation has been collected. This information is presently being compiled and articulated for inclusion in the biological support document. Much of the data required to assemble the economic model has been obtained. However, the data which are used to compute economic costs and benefits remain to be assembled.

The Service will complete the biological support document and economic analysis before publishing the final rule. The Service has decided that because this information is not presently available for review and public comment, these documents will be made available to the public for review before the Service finalizes the designation and issues a final rule. This will allow for meaningful public comment on the rule.

Recovery plans have been written for three of the four species. The Colorado Squawfish Recovery Plan was approved on March 16, 1978, and revised on August 6, 1991 (U.S. Fish and Wildlife Service 1991). The Humpback Chub Recovery Plan was approved on August 22, 1979, with a first revision on May 15, 1984, and a second revision September 19, 1990 (U.S. Fish and Wildlife Service 1990a). The Bonytail Chub Recovery Plan was approved on May 16, 1984, with a revised plan approved September 4, 1990 (U.S. Fish and Wildlife Service 1990b). Recovery goals contained in these recovery plans have been used in identifying and evaluating critical habitat for these three species. A recovery plan for the razorback sucker is currently in preparation by the Colorado River Fishes Recovery Team (Recovery Team) and Service staff, but it was not available for use in preparing this rule.

Considerations and Impacts of Critical Habitat

A list and discussion of activities which affect or may be affected by this proposed critical habitat designation has not been completed. Once completed, this information will be presented in the economic analysis and the biological support document and will be incorporated into the final rule.

"Critical habitat," as defined in section 3(5)(A) of the Act, means: (i) The specific areas within the geographical area occupied by the species at the time it is listed, on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

The term "conservation," as defined in section 3(3) of the Act, means: The use of all methods and procedures

which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.

Therefore, in the case of critical habitat, conservation represents the areas required to recover a species to the point of delisting (i.e., the species is recovered and is removed from the list of endangered and threatened species). In this context, critical habitat preserves options for a species' eventual recovery. Section 3(5)(C) further states that the entire geographical area which can be occupied by the species shall not be included in critical habitat except in special circumstances.

The designation of critical habitat will not, by itself, lead to recovery, but is one of several measures available to contribute to conservation of a species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether or not they are currently occupied by the listed species. Such designations alert Federal Agencies, States, the public, and other entities about the importance of an area for the conservation of a listed species. Critical habitat can also identify areas that may require special management or protection. Areas designated as critical habitat receive protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal Agency which are likely to adversely modify or destroy critical habitat. Section 7 requires that Federal Agencies consult on their actions which may affect critical habitat and ensure that their actions are not likely to destroy or adversely modify critical habitat. It also requires conferences on Federal actions which are likely to result in the modification or destruction of proposed critical habitat. Except for these added consultation (designated critical habitat) and conference (proposed critical habitat) requirements provided under section 7, the Act does not have other requirements relating to critical habitat.

Designation of critical habitat only affects Federal actions, and it is useful in notifying Federal Agencies about areas that are important to a listed species. Designation does not create a management plan for a listed species. Designation does not prohibit certain actions, entail specific habitat requirements, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), nor does it have a direct effect on habitat not designated as critical habitat. However, critical habitat may provide added protection for areas designated and thus shorten the time needed to achieve recovery.

Areas designated as critical habitat are essential to the conservation of a species. Areas not included in critical habitat that contain one or more of the essential elements may still be important for conservation of a species and may be protected by other provisions of the Act, by other conservation laws, and by agency regulations. Also, some areas may no longer contain some of the constituent elements, but these elements may be restored in the future. These areas may also be essential for the long-term recovery of the species and, therefore, may be designated as critical habitat. However, not all areas containing habitat features of a listed species are necessarily essential for its survival and recovery. Although designated critical habitat also may be of considerable value in maintaining ecosystem integrity and supporting other species, these attributes are only considered in the economic analysis and exclusion process.

Determination of Critical Habitat

General

The primary constituent elements and additional selection criteria used to propose critical habitat areas are presented in this rule. Detailed descriptions and biological basis for the constituent elements will be presented in the biological support document. In determining which areas to designate as critical habitat for a species, the Service considers those physical and biological attributes that are essential to species conservation (i.e., constituent elements). In addition, the Act stipulates that the areas containing these elements may require special management considerations or protection. Such physical and biological features are stated in 50 CFR 424.12 and include, but are not limited to, the following items:

(1) Space for individual and population growth, and for normal behavior;
(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
(3) Cover or shelter;
(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally;
(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

In considering the biological basis for proposing critical habitat, the Service focuses on the primary physical and biological elements that are essential to the conservation of the species without consideration of land or water ownership or management. The Service is required to list the known primary constituent elements together with a description of any critical habitat that is proposed.

The primary constituent elements determined necessary to the survival and recovery of the four Colorado River endangered fishes include, but are not limited to:

Water

This includes a quantity of water of sufficient quality (i.e., temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is required for the particular life stage for each species.

Physical Habitat

This includes areas of the Colorado River system that are inhabited or potentially habitable for use in spawning, nursery, feeding, and rearing, or corridors between these areas. In addition to river channels, these areas also include bottomlands, side channels, secondary channels, oxbows, backwaters, and other areas in the 100-year floodplain, which when inundated provide spawning, nursery, feeding and rearing habitats, or access to these habitats.

Biological Environment

Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation, although considered a normal component of this environment, may be out of balance due to introduced fish species in some areas. This may also be true of competition, particularly from nonnative fish species.

These primary constituent elements are interrelated in the life history of these four endangered fishes. This relationship was a prime consideration in selection of proposed critical habitat for the fishes.

Only those areas in the 100-year floodplain that contain the constituent elements will be considered part of critical habitat. The Service stresses that although critical habitat may only be seasonally occupied by the fish, such habitat remains important for their conservation.

Pursuant to section 4(b)(2) of the Act, critical habitat is to be designated on the basis of the best scientific data available, and after considering the economic and other impacts of designation. Areas may be excluded from the designation if the Secretary determines that the benefits of exclusion outweigh the benefits of critical habitat designation, unless the exclusion will result in the species' extinction.

This designation of critical habitat for the Colorado River endangered fish consisted of three major steps. The first step was to complete a biologically-based determination of potential critical habitat areas. The second step will determine the impacts of this designation. The third step will be to decide which areas, if any, should be excluded based upon economic or other relevant impacts and to determine the costs and benefits associated with the final designation.

The first step required an inventory of areas needed for the survival and recovery of the four species. For the razorback sucker, the biological determination was based on the primary constituent elements, additional selection criteria determined by the Service, past Service findings, and other published and nonpublished sources. These constituent elements and selection criteria were then applied throughout the historical range of the razorback sucker. For the Colorado squawfish, humpback chub, and bonytail chub, the biological determination was based on the primary constituent elements, recovery plans for these species, past Service findings, and other published and nonpublished sources. The biological support document will provide the details of the biological determinations.

The second step will be to determine the potential impacts of the proposed designations. These impacts will be addressed in the economic analysis.

The third step will be to decide which areas, if any, should be excluded based upon a determination that the benefits of the exclusion outweigh the benefits of designation unless the exclusion will result in the extinction of any of the four species. Any changes in critical habitat areas resulting from the exclusion process will be noted in the final rule.

Additional Selection Criteria for the Razorback Sucker

Because a recovery plan for the razorback sucker has not yet been prepared, additional selection criteria were developed to assist the Service in making a determination of which areas to propose as critical habitat. Previous Service findings, other published and unpublished literature sources, and discussions with individual members of the Colorado River Fishes Recovery Team were utilized to develop the constituent elements and additional selection criteria.

The razorback sucker has displayed a degree of versatility in its ability to survive and spawn in different habitats. However, razorback sucker populations continue to decline and are considered below the survival level. Thus, as versatile as the razorback sucker appears to be in selecting spawning habitat, there has been little or no recruitment of young to the adult population. Therefore, special consideration was given to habitats required for its reproduction and recruitment.

The following selection criteria were used by the Service to help determine areas necessary for survival and recovery of the razorback sucker.

1. Known or suspected wild spawning populations, although recruitment may be limiting or nonexistent.

2. Areas where juvenile razorback suckers have been collected or which could provide suitable nursery habitat (backwaters, flooded bottomlands, or coves).

3. Areas presently occupied or that were historically occupied that are considered necessary for recovery and that have the potential for establishment of razorback sucker.

4. Areas and water required to maintain rangewide fish distribution, and diversity under a variety of physical, chemical, and biological conditions.

5. Areas that need special management or protection to insure razorback survival and recovery. These areas once met the habitat needs of the razorback sucker and may be recoverable with additional protection and management.

Summary

The primary constituent elements were applied throughout the historical range of the Colorado River endangered fishes. In addition, the five selection criteria described above were also used to evaluate potential razorback sucker critical habitat areas. The proposed critical habitat designations are based on the primary constituent elements, published and unpublished sources, Service reports and other findings, recovery plans (for Colorado squawfish, humpback chub, and bonytail chub), additional selection criteria, and the preliminary recovery goals being presently discussed for the razorback sucker by the Colorado River Fishes Recovery Team.

Proposed Critical Habitat Designation

The results of the critical habitat inventory process described above are presented in this section. The presence of one or more primary constituent elements did not automatically result in inclusion as proposed critical habitat. Section 3(5)(C) of the Act states that "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species." This proposal is in compliance with the provisions of the Act, as only a portion of the historical range is proposed for designation.

A detailed discussion of the biological basis for selection of each river reach proposed for critical habitat will be included in the biological support document. This will include a discussion of which attributes of the constituent elements may need to be enhanced.

The critical habitat areas proposed below are those that the Service believes are required for the survival and recovery of each species. Figure 1 displays the total extent of proposed critical habitat for all four species combined. This includes the considerable overlap of proposed critical habitat between species. A specific description of the location of each area proposed for critical habitat is provided later in this rule.

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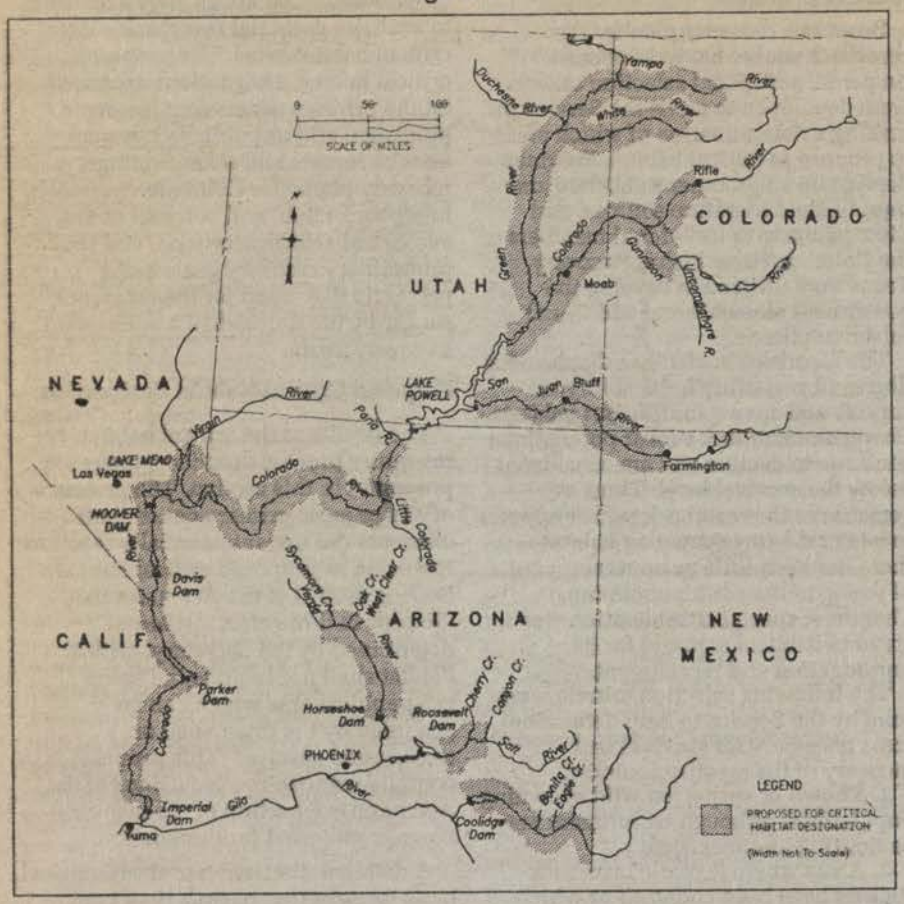
Figure 1



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Critical habitat for each species by State is summarized in Table 1. The 100-year floodplain delineates the lateral boundary of the proposed critical habitat for the razorback sucker and Colorado squawfish. This boundary encompasses the productive areas adjacent to the rivers, including the mouths of smaller tributaries and other habitats that provide essential fish habitat when inundated.

TABLE 1.—RIVER KILOMETERS (MILES) OF CRITICAL HABITAT FOR FOUR ENDANGERED COLORADO RIVER FISHES

State	Razorback sucker	Colorado squawfish	Humpback chub	Bonytail chub	Total[1]
Colorado	349	583	95	95	583
	(217)	(362)	(59)	(59)	(362)
Utah	1107	1168	224	224	1172
	(688)	(726)	(139)	(139)	(728)
New Mexico	63	97	.....	.....	97
	(39)	(60)	.....	.....	(60)
Arizona	993	.....	291	.....	993
	(617)	.....	(181)	.....	(617)
AZ/Nevada	209	.....	.....	132	209
	(130)	.....	.....	(82)	(130)
AZ/California	214	.....	.....	103	317
	(133)	.....	.....	(64)	(197)
Basin Total[2]	2935	1848	610	554	3370
	(1824)	(1148)	(379)	(344)	[3](2094)

[1] Total—Distances include all overlapping critical habitat reaches by State for all four Colorado River endangered fishes.
[2] Basin Total—Distances include total extent of critical habitat by species for the entire Basin.
[3] Total Basin Total—Note that the sum of critical habitat by species is greater than actual river distance due to extensive overlap.

Razorback Sucker

The Service is proposing 15 reaches of the Colorado River system as critical habitat for the razorback sucker. These reaches total 2,935 kilometers (1,824 miles) as measured along the center line of the river within the subject reaches (table 1). This represents approximately 52% of the historical habitat for the species. In the Upper Basin, critical habitat is being proposed in the Green, Yampa, Duchesne, Colorado, White, Gunnison, and San Juan Rivers. Portions of the Colorado, Gila, Salt and Verde Rivers are being proposed in the Lower Basin. These reaches flow through a variety of landownerships, both public and private. The approximate mileage of critical habitat by landownership of shoreline for the razorback sucker is presented in table 2.

TABLE 2.—OWNERSHIP OF SHORELINE IN KILOMETERS (MILES) FOR PROPOSED CRITICAL HABITAT FOR THE ENDANGERED COLORADO RIVER FISHES[1]

Ownership[2]	Razorback sucker	Colorado squawfish	Humpback chub	Bonytail chub
NPS	1,955	900	545	686
	(1,215)	(559)	(338)	(426)
BLM	1,147	1,119	203	134
	(713)	(695)	(126)	(83)
USFS	460	0	0	0
	(286)	.....	.....	.....
USFWS	159	35	0	40
	(99)	(22)	.....	(25)
Tribal	998	451	444	138
	(620)	(280)	(276)	(86)
State Lands	69	79	1	40
	(43)	(49)	(<1)	(25)
Private	1,083	1112	27	60
	(673)	(691)	(17)	(37)
Total	5,871	3,696	1,220	1,098
	(3,649)	(2,296)	(758)	(682)

[1] The river distances shown in this table were compiled using total shoreline kilometers (assuming 1 kilometer of river centerline has 2 kilometers of shoreline) for each proposed critical habitat reach. There is considerable overlap of proposed critical habitat reaches between species; thus, total miles of critical habitat for all four Colorado River endangered fishes proposed to be designated cannot be obtained from this table.
[2] NPS—National Park Service; BLM—Bureau of Land Management; USFS—U.S. Forest Service; USFWS—U.S. Fish and Wildlife Service.

Humpback Chub

The Service is proposing seven reaches of the Colorado River system as critical habitat for the humpback chub. These reaches total 610 kilometers (379 miles) as measured along the center line of the subject reaches (table 1). This represents approximately 28% of the historical habitat of the species. Critical habitat for the humpback chub is being proposed in the Colorado, Green, and Yampa Rivers in the Upper Basin, and the Colorado and Little Colorado Rivers in the Lower Basin. The approximate mileage of critical habitat by landownership of shoreline for the humpback chub is presented in table 2.

Bonytail Chub

The Service is proposing five reaches of the Colorado River system as critical habitat for the bonytail chub. These reaches total 554 kilometers (344 miles) as measured along the center line of the subject reaches (table 1). This represents approximately 15 percent of the historical habitat of the species. Critical habitat for the bonytail chub is being

proposed in the Colorado, Green, and Yampa Rivers in the Upper Basin, and the Colorado River in the Lower Basin. The approximate mileage of critical habitat by landownership of shoreline for the bonytail chub is presented in table 2.

Effects of Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal Agencies insure that their actions are not likely to jeopardize the continued existence of any listed species. Jeopardy is defined at 50 CFR 402.02 as any action that would be expected to appreciably reduce the likelihood of survival and recovery of a species in the wild by reducing its numbers, reproduction, or distribution. Destruction or adverse modification of critical habitat is defined at 50 CFR 402.02 as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The regulations also state that such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. The requirement to consider potential adverse modification of critical habitat is an incremental consideration above and beyond the review necessary to evaluate the likelihood of jeopardy and of incidental take in a section 7 consultation. Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation.

As required by 50 CFR 402.14, a Federal Agency must consult with the Service if it determines that an action may affect either a listed species or its critical habitat. Federal action agencies are responsible for determining whether or not to consult with the Service. The Service will review action agencies' determinations on a case-by-case basis and may or may not concur with the action agencies' determination of "no effect" or "may affect" for critical habitat, as appropriate.

Survival and recovery, mentioned in the definitions of adverse modification and jeopardy, are conceptually related. The survival of a species may be viewed, in part, as a progression between extinction and recovery of the species. The closer a species is to recovery, the greater the certainty of its continued survival. Thus, terms "survival" and "recovery" differ by the degree of confidence about the ability of a species to persist in nature over a given time period.

The purpose of critical habitat is to contribute to a species' conservation, which by definition leads to recovery and delisting. Section 7(a)(2) prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of a listed species. As a result of the link between critical habitat and recovery, these prohibitions should protect the value of critical habitat until recovery.

In section 7 consultations, the Service will consider effects of proposed actions on the primary constituent elements in view of the value of that particular area to the species. Section 7 consultation is initiated by a Federal Agency when its actions may affect critical habitat by impacting any of the primary constituent elements or reduce the potential of critical habitat to develop these elements. This is independent from any other Federal action that may affect the species. The consultation also would take into consideration Federal actions outside of critical habitat that also may impact a critical habitat reach (e.g., water management, water quality, water depletions, and nonnative fish stocking or introductions). The consultation should consider the effects of Federal actions within a critical habitat reach relative to other critical habitat reaches. Though an action may not adversely modify critical habitat, it still may affect one or more of the Colorado River endangered fish and, therefore, be subject to consultation under section 7 of the Act to determine the likelihood of jeopardy to the species.

Federal Agencies are required to confer on any of their discretionary actions which are likely to result in the adverse modification or destruction of proposed critical habitat. The conference is designed to identify and resolve potential conflicts. Conferences are different than formal consultations in that they involve informal discussions and the Service only makes advisory recommendations on ways to minimize or avoid adverse effects. Agencies are not precluded from making irreversible and irretrievable commitments of resources while critical habitat is merely proposed; they are, however, precluded by section 7(d) from making such commitments after a final designation is effective.

Considerations of Economic and Other Factors

The economic, environmental, and other impacts of a designation also must be evaluated and considered. Thus, the Service must identify present and anticipated activities that may adversely modify the proposed critical habitat or be affected by its designation. The Secretary may exclude any area from critical habitat should it be determined that the benefits of such exclusion outweigh the benefits of specifying such an area as part of the critical habitat unless it is determined, based upon the best scientific and commercial data available, that the failure to designate such an area as critical habitat will result in the extinction of the species concerned.

The economic analysis will only consider impacts that result from critical habitat designation. These impacts are in addition to existing economic and other impacts which are attributable to listing of the species. Impacts attributable to listing include those resulting from the taking prohibitions under section 9 of the Act and associated regulations. "Taking" as defined in section 3(18) of the Act includes harm to a listed species. "Harm" means: An act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (50 CFR 17.3).

Impacts attributable to listing also include those resulting from the responsibility of Federal Agencies under section 7 to insure that their actions are not likely to jeopardize the continued existence of endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or modification of its habitat regardless of whether that habitat has been formally designated as critical. The Act provides significant protection to species, including habitat, as a result of listing. Therefore, the direct economic and other impacts resulting from additional habitat protection through critical habitat designation may be minimal. In general, the designation of critical habitat reinforces the substantive protection resulting from listing.

To complete an economic analysis for the four Colorado River endangered fishes, costs and benefits that may result from designating critical habitat must be analyzed. The most time consuming and complex portion of this analysis is developing a range of flow scenarios for

river reaches where biological information is limited on the needs of these species. This range of flow scenarios will be evaluated for impacts from potential changes in flows. For river reaches where flow requirements of the fish are known, these flows must be compared to present and historical flows. This analysis will capture the costs of having endangered fish present in the river including listing and critical habitat designation costs. Where the data are available, flow scenarios will be developed. These flow scenarios will then be evaluated to determine possible costs and benefits to hydropower production, recreation, water management, etc. Cost/benefit data must also be collected for activities not directly affected by water flow. All the impacts will then have to be quantified and assembled into data bases for input into the economic model. The national and regional economic effects will then be analyzed using the developed and calibrated model. Costs and benefits must then be allocated between:

(1) Listing effects and effects of the critical habitat designation,

(2) Effects among species, and

(3) Effects among river reaches being proposed. The draft economic analysis will then be prepared and undergo a public review prior to incorporating the results into the final rule.

The economic analysis of critical habitat designations has two major components. The first component involves identifying the potential impacts of the critical habitat designations and estimating their magnitude. The second component involves developing and utilizing economic models to demonstrate how the positive and negative economic impacts may affect various economic interests in the Basin, and the economy of the Basin as a whole. The major types of economic impacts that may occur have been identified, and efforts are under way to estimate their magnitude. This includes development of an input-output model for each of the seven States in the Basin, and a computerized model for the entire Basin.

Because of the large geographical area of the study and the complex nature of potential impacts, a considerable amount of work on economic impacts remains to be completed. Specifically, computerized modeling studies must be completed to assess the potential effects of critical habitat designation on the seven-State area. Furthermore, a Basin-wide survey of recreational resources must be completed to assess the potential magnitude of recreational impacts. Finally, a Basin-wide economic model must be developed and paramaterized to assess the overall economic consequences of positive and negative impacts to the various economic interests throughout the Basin. These activities require a complex and diverse set of economic activities over a large geographic area and will require time to complete.

The Service's economic analysis will use a Computable General Equilibrium Model (CGE Model) to describe the interrelationships in the economy at a chosen level of spatial aggregation (e.g., counties) and the relationships between sectors (e.g., recreation and hydropower). In addition, the model allows for analysis of resource reallocation proposals (e.g., changes in river flows as represented by increased or decreased hydropower production) in a manner such that the net effects, not just the total effects, are calculated. Given this capability, the impacts are properly represented as net impacts throughout the economy; thus, the model provides a comprehensive assessment of economic impacts.

CGE Models are excellent tools to estimate the direct and indirect economic impacts of resource reallocation decisions, such as critical habitat designation. CGE Models explicitly predict the price adjustments observed in an economy. It is important to capture the adjustment of the prices of goods and services in the economy which result from changes in how resources are utilized. Failure to represent and allow for changes, such as price changes, will result in a misrepresentation of the true impacts of critical habitat designation. CGE Models also will allow substitution possibilities in production and consumption.

The source of regional production data to be used in the analysis is the Department of Agriculture's Forest Service's IMPLAN Project. These data represent the economic flow between sectors in the economy, such as purchases of inputs from one industry to be used in another industry. The CGE Model captures these economic interactions of consumers, production sectors, and government sectors.

The number of economic sectors in the IMPLAN data set has been collapsed from 523 to 20 sectors. The number of sectors was reduced by merging related activities to make the analysis tractable. This allows focus on those sectors representing the most significant economic activities associated with the Basin. These 20 sectors capture the principal activities associated with hydroelectric power, agriculture, municipal, industry, recreation, mining, and oil and gas production. Other data, which will be incorporated into the CGE Model, include the Consumer Expenditure Survey, the Bureau of Economic Analysis' capital stock data and value added data, the Census of Agriculture land use by crop type data, and recreation data.

Any direct impacts will occur at sub-State levels; therefore, it is appropriate to base the analysis on sub-State data. The CGE Model allows for inputs at the county level and includes in excess of 150 counties of the seven-State region. This level of desegregated county data was chosen because any direct impacts will be concentrated at the county level, while total impacts may be observed regionwide.

As a result of the time constraints under which this initial proposed critical habitat designation was prepared and the magnitude of the issues and area under consideration, the Service's economic analysis has not been completed. However, once completed it will be made available for public review and then be incorporated in the final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices.

Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land and water acquisitions in cooperation with States and requires that recovery actions be carried out for all listed species. The requirements for Federal Agencies with respect to protection of designated critical habitat of a federally listed species and prohibitions against taking are discussed below.

Section 7 of the Act requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to any critical habitat that is designated or proposed for the species. Section 7(a)(4) of the Act and 50 CFR 402.10 require Federal Agencies to confer informally with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat. If critical habitat is subsequently designated, section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into consultation with the Service.

Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

In the case of any of the Colorado River endangered fish, the Service will confer on projects affecting proposed critical habitat when so requested by an action agency. The evaluation of Federal actions involving designated critical habitat will be made on a case-by-case basis during section 7 consultation. The Service will consider the effects of a proposed Federal action on the primary constituent elements associated with critical habitat, along with the reasons why that area was determined to be critical habitat.

When the Service issues a jeopardy biological opinion, it must also provide reasonable and prudent alternatives to the project, if any are identifiable. This is also true when the Service makes a finding of adverse modification to designated critical habitat. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as:

> Alternative actions identified during formal consultation that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid * * * resulting in the destruction or adverse modification of critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

The Service may reinitiate consultation and confer on some projects for which biological opinions on the effect of Federal Agency actions on the Colorado River endangered fish already have been issued when discretionary Federal involvement remains, and the Service and lead Federal Agency determine their action may affect this proposed critical habitat. As necessary, the Service will prepare conference reports addressing effects of these actions on proposed critical habitat. Until a final rule is published, the Service will issue combined consultation/conference documents for any new consultation request received subsequent to publication of this proposed rule and before a final designation is effective.

Public Comments Solicited

The Service intends that any action resulting from this proposal will be appropriate and effective. Therefore, comments from the public, other concerned government agencies, Indian nations, the scientific and environmental communities, industry, or any other interested organization concerning the information presented within this proposed rule are hereby sought.

As stated previously, comments received during the 60-day comment period on this proposed rule will be considered during preparation of the final rule. Additionally, comments received after the economic analysis and biological support document are made available will be used to prepare a final rule. The final decision on the designation of critical habitat will take into consideration the comments and any additional information received by the Service and will include any exemption determinations.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in conjunction with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

Based on the information discussed in this rule concerning public projects and private activities within critical habitat areas, it is not clear whether significant economic impacts will result from the critical habitat designation. There are a limited number of actions on private land that have Federal involvement through funds or permits that may be affected by critical habitat designation. A final determination of the impacts of this proposal is not possible until the required economic analysis is completed. The final rule will contain a determination of the proposed actions in compliance with the Regulatory Flexibility Act and Executive Order 12291. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1990.

References Cited

A complete list of all references cited herein is available upon request from the Service's Salt Lake City Field Office (see **ADDRESSES** above).

Author

The primary authors of this proposed rule are Henry Maddux, U.S. Fish and Wildlife Service, Ecological Services (see **ADDRESSES** section); Lesley Fitzpatrick, U.S. Fish and Wildlife Service, Arizona Field Office; William Noonan, U.S. Fish and Wildlife Service, Colorado State Office; and Harold Tyus, U.S. Fish and Wildlife Service, Denver Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

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.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "critical habitat" entry for "Chub, bonytail," "Chub, humpback," "Squawfish, Colorado," and "Sucker, razorback," under Fishes, to read 17.95(e).

3. It is proposed to amend § 17.95(e) by adding critical habitat of the bonytail chub (*Gila elegans*), humpback chub (*Gila cypha*), Colorado squawfish (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*), in the same alphabetical order as these species occur in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

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(e) * * *

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Bonytail Chub (*Gila elegans*)

Description of areas taken from BLM 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; La Sal, UT/CO 1985; Hite Crossing, UT 1982; Parker, AZ/CA 1980; Davis Dam, AZ/NV/CA 1982; Boulder City, NV/AZ 1978; Needles, CA 1986.

Colorado, Moffat County. The Yampa River from the boundary of Dinosaur National Monument in T.6N., R.99W., section 27 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., section 28 (6th Principal Meridian).

Utah, Uintah County, and Colorado, Moffat County. The Green River from the confluence with the Yampa River in T.7N., R.103W., section 28 (6th Principal Meridian) to the boundary of Dinosaur National Monument in T.6N., R.24E. section 30 (Salt Lake Meridian).

Utah, Uintah and Grand Counties. The Green River (Desolation and Gray Canyons) from Sumner's Amphitheater (river mile 85)

in T.12S., R.18E., section 5 (Salt Lake Meridian) to Swasey's Rapid (river mile 12) in T.20S., R.16E., section 3 (Salt Lake Meridian).

Utah, Grand County, and Colorado, Mesa County. The Colorado River from Black Rocks (river mile 137) in T.10S., R.104W., section 25 (6th Principal Meridian) to Fish Ford (river mile 106) in T.21S., R.24E., section 35 (Salt Lake Meridian).

Utah, Garfield and San Juan Counties. The Colorado River from Brown Betty Rapid (river mile 212.5) in T.30S., R.18E., section 34 (Salt Lake Meridian) to Imperial Canyon (river mile 200) in T.31S., R.17E., section 28 (Salt Lake Meridian).

Arizona, Mohave County; Nevada, Clark County; and California, San Bernardino County. The Colorado River from Hoover Dam in T.30N., R.23W., section 3 (Gila and Salt River Meridian) to Parker Dam in T.11N., R.18W., section 16 (Gila and Salt River Meridian) including Lakes Mohave and Havasu up to their full pool elevations.

Known constituent elements include water, physical habitats, and biological environment as required for each particular life stage for each species.

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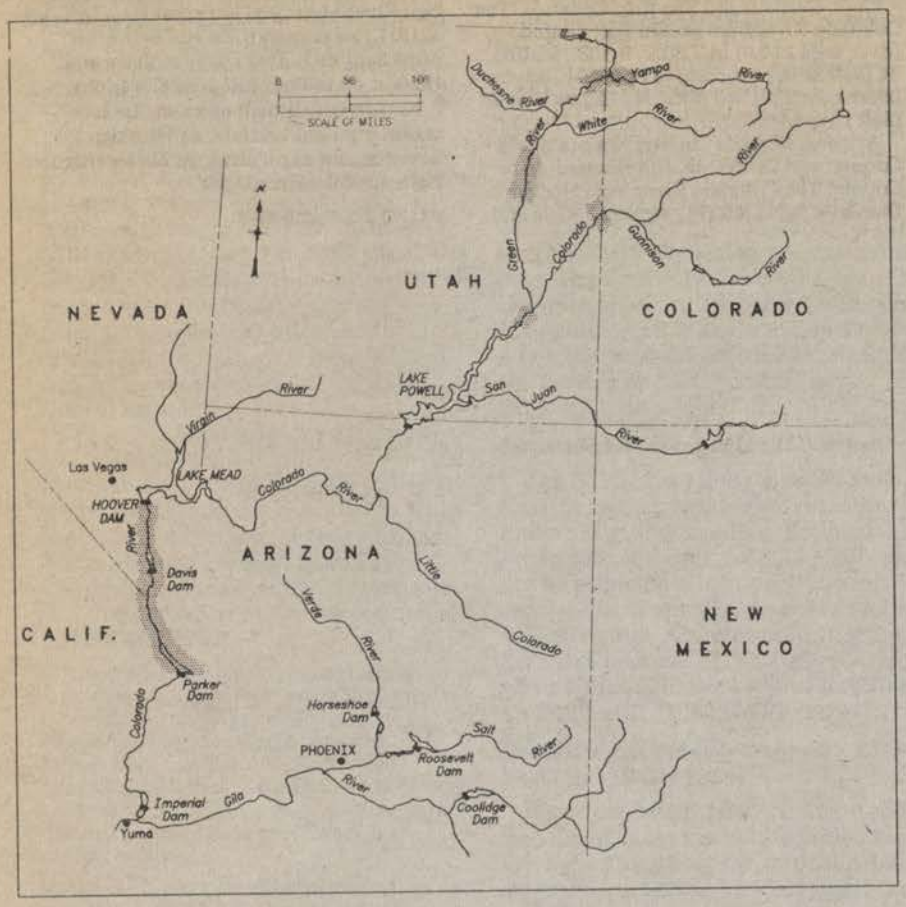

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Humpback Chub (*Gila cypha*)

Description of areas taken from BLM 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; Vernal, UT/CO 1982; Grand Junction, CO 1990; Moab, UT/CO 1985; La Sal, UT/CO 1985; Tuba City, AZ 1983; Peach Springs, AZ 1980; Grand Canyon, AZ 1980; Mt. Trumbull, AZ 1979.

Colorado, Moffat County. The Yampa River from the boundary of Dinosaur National Monument in T6N., R.99W., section 27 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., section 28 (6th Principal Meridian).

Utah, Uintah County, and Colorado, Moffat County. The Green River from the confluence with the Yampa River in T.7N., R.103W., section 28 (6th Principal Meridian) to the southern boundary of Dinosaur National Monument in T.6N., R.24E., section 30 (Salt Lake Meridian).

Utah, Uintah and Grand Counties. The Green River (Desolation and Gray Canyons) from Sumners Amphitheater (river mile 85) in T.12S., R.18E., section 5 (Salt Lake Meridian) to Swasey's Rapid (river mile 12) in T.20S., R.16E., section 3 (Salt Lake Meridian).

Utah, Grand County, and Colorado, Mesa County. The Colorado River from Black Rocks (river mile 137) in T.10S., R.104W., section 25 (6th Principal Meridian) to Fish Ford River (mile 106) in T.21S., R.24E., section 35 (Salt Lake Meridian).

Utah, Garfield and San Juan Counties. The Colorado River from Brown Betty Rapid River (mile 212.5) in T.30S., R.18E., section 34 (Salt Lake Meridian) to Imperial Canyon (river mile 200) in T.31S., R.17E., section 28 (Salt Lake Meridian).

Arizona, Coconino County. The Little Colorado River from river mile 8 in T.32N., R.6E., section 12 (Salt and Gila River Meridian) to the confluence with the Colorado River in T.32N., R.5E., section 1 (Salt and Gila River Meridian).

Arizona, Coconino County. The Colorado River from Nautiloid Canyon (river mile 34) in T.36N., R.5E., section 35 (Salt and Gila River Meridian) to Granite Park (river mile 208) in T.30N., R.10W., section 25 (Salt and Gila River Meridian).

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

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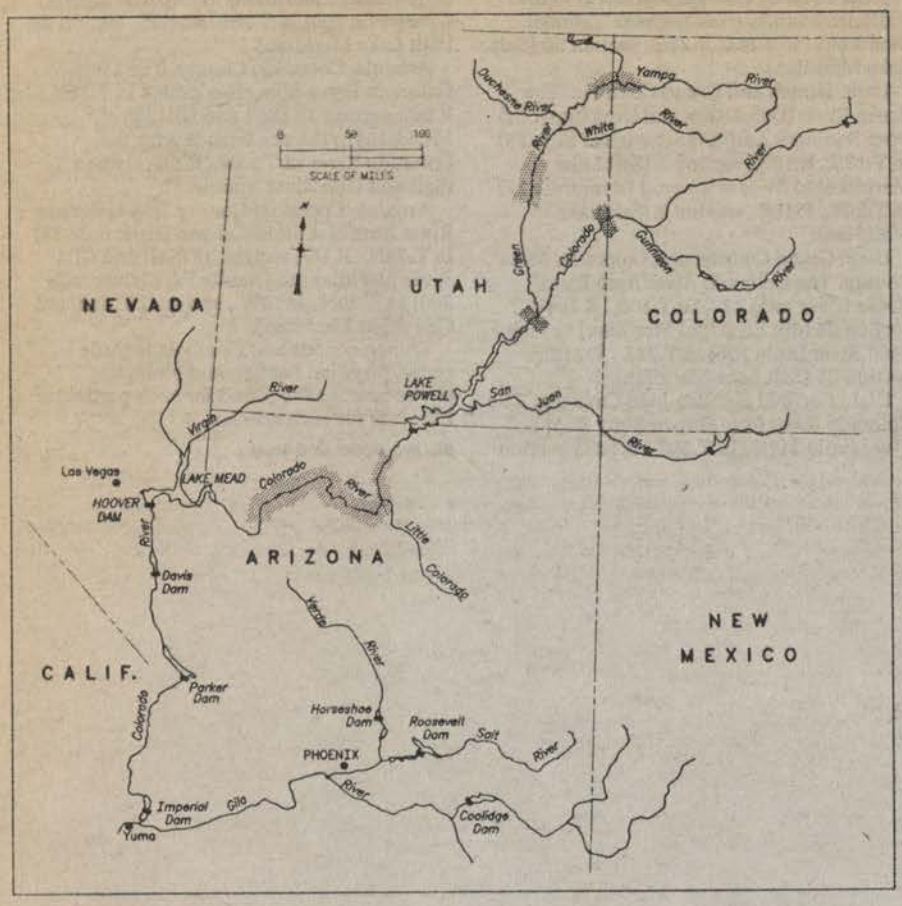

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Colorado Squawfish (*Ptychocheilus lucius*)

Description of areas taken from BLM 1:100,000 maps (available from BLM State Offices): Canyon of Lodore, CO 1990; La Sal, UT/CO 1985; Rangely, CO 1989; Delta, CO 1989; Grand Junction, CO 1990; Hite Crossing, UT 1982; Vernal, UT/CO 1990; Craig, CO 1990; Bluff, UT/CO 1985; Moab, UT/CO 1985; Hanksville, UT 1982; San Rafael Desert, UT 1985; Huntington, UT 1982; Price, UT 1989; Farmington, NM 1991; Navajo Mountain, UT/AZ 1982. The 100-year floodplain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the Federal Emergency Management Agency (FEMA). In areas where a FIRM is not available the presence of alluvium soils or known high water marks can be used to determine the extent of the floodplain. Only areas of floodplain containing constituent elements are considered critical habitat.

Colorado, Moffat County. The Yampa River and its 100-year floodplain from the State Highway 394 bridge (river mile 137.7) in T.6N., R.91W., section 1 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., section 28 (6th Principal Meridian).

Utah, Uintah, Carbon, Grand, Emery, Wayne, and San Juan Counties, and Colorado, Moffat County. The Green River and its 100-year floodplain from the confluence with the Yampa River in T.7N., R103W., section 28 (6th Principal Meridian) to the confluence with the Colorado River in T.30S., R.19E., section 7 (Salt Lake Meridian).

Colorado, Rio Blanco County, and Utah, Uintah County. The White River and its 100-year floodplain from Rio Blanco Lake Dam (river mile 150) in T.1N., R.96W., section 6 (6th Principal Meridian) to the confluence with the Green River in T.9S., R.20E., section 4 (Salt Lake Meridian).

Colorado, Delta and Mesa Counties. The Gunnison River and its 100-year floodplain from the confluence with the Uncompahgre River in T.15S., R.96W., section 11 (6th Principal Meridian) to the confluence with the Colorado River in T.1S., R.1W., section 22 (Ute Meridian).

Colorado, Mesa and Garfield Counties; and Utah, Grand, San Juan, Wayne, and Garfield Counties. The Colorado River and its 100-year floodplain from the Colorado River Bridge at exit 90 north off Interstate 70 (river mile 238) in T.6S., R.93W., section 16 (6th Principal Meridian) to North Wash including the Dirty Devil arm of Lake Powell up to the full pool elevation in T.33S., R.14E., section 29 (Salt Lake Meridian).

New Mexico, San Juan County, and Utah, San Juan County. The San Juan River and its 100-year floodplain from the State Route 371 Bridge in T.29N., R.13W., section 17 (New Mexico Meridian) to Neskahai Canyon in the San Juan arm of Lake Powell in T.41S., R.11E., section 26 (Salt Lake Meridian) up to the full pool elevation.

Known constituent elements include water, physical habitats, and biological environment as required for each particular life stage for each species.

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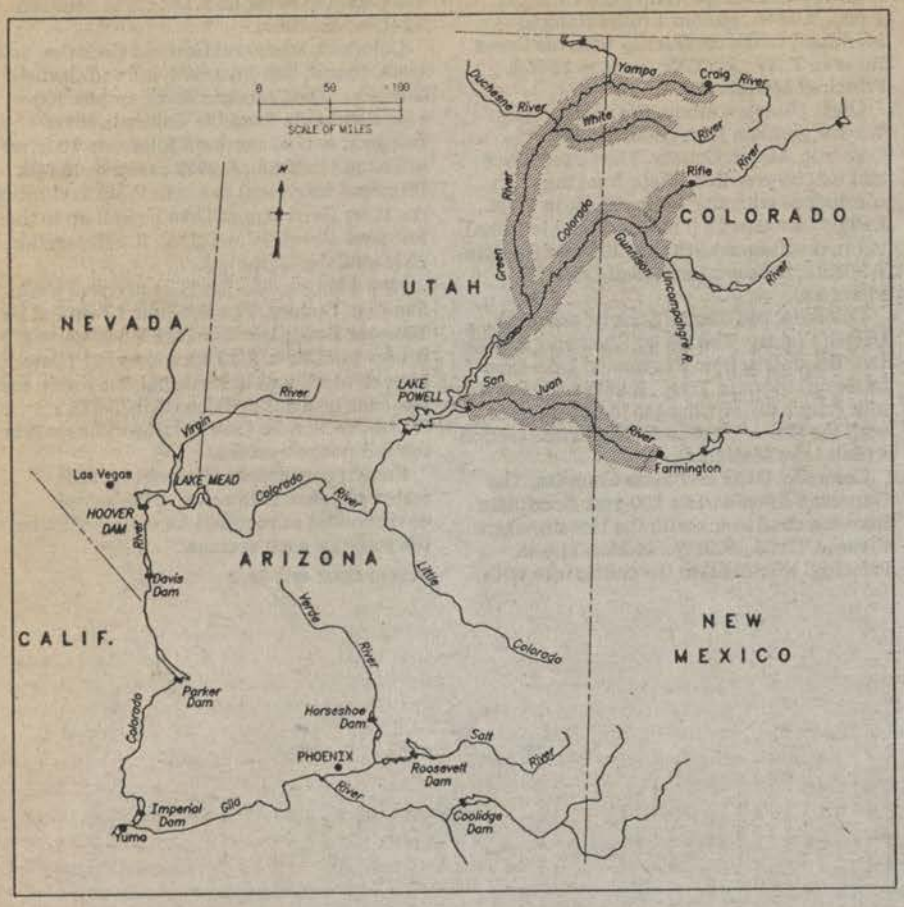

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* * * * *

Razorback Sucker (*Xyrauchen texanus*)

Description of areas taken from Bureau of Land Management (BLM) 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; La Sal, UT/CO 1985; Westwater, UT/CO 1981; Hite Crossing, UT 1982; Glenwood Springs, CO 1988; Grand Junction, CO 1990; Delta, CO 1989; Navajo Mountain, UT/AZ 1982; Vernal, UT/CO 1990; Craig, CO 1990; Bluff, UT/CO 1985; Moab, UT/CO 1985; Hanksville, UT 1982; San Rafael Desert, UT 1985; Huntington, UT 1982; Price, UT 1989; Tuba City, AZ 1983; Lake Mead, NV/AZ 1981; Davis Dam, AZ/NV/CA 1982; Parker, AZ/CA 1980; Yuma, AZ/CA 1988; Safford, AZ 1991; Globe, AZ 1980; Clifton, AZ/NM 1975; Prescott, AZ 1982; Theodore Roosevelt Lake, AZ 1982; Grand Canyon, AZ 1980; Mt. Trumbull, AZ 1979; Boulder City, NV/AZ 1978; Blythe, CA/AZ 1976; Trigo Mountains, AZ/CA 1988; Sedona, AZ 1982; Payson, AZ 1988; and U.S. Forest Service map: Tonto National Forest, Phoenix AZ. The 100-year floodplain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the Federal Emergency Management Agency (FEMA). In areas where a FIRM is not available, the presence of alluvium soils or known high water marks can be used to determine the extent of the floodplain. Only areas of floodplain containing constituent elements are considered critical habitat.

Colorado, Moffat County. The Yampa River and its 100-year floodplain from the mouth of Cross Mountain Canyon in T.6N., R.98W., section 23 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., section 28 (6th Principal Meridian).

Utah, Uintah County, and Colorado, Moffat County. The Green River and its 100-year floodplain from the confluence with the Yampa River in T.7N., R.103W., section 28 (6th Principal Meridian) to Sand Wash at river mile 96 in T.11S., R.18E., section 20 (6th Principal Meridian).

Utah, Uintah, Carbon, Grand, Emery, Wayne, and San Juan Counties. The Green River and its 100-year floodplain from Sand Wash at river mile 96 at T.11S., R.18E., section 20 (6th Principal Meridian) to the confluence with the Colorado River in T.30S., R.19E., section 7 (6th Principal Meridian).

Utah, Uintah County. The White River and its 100-year floodplain from the boundary of the Uintah and Ouray Indian Reservation at river mile 18 in T.9S., R.22E., section 21 (Salt Lake Meridian) to the confluence with the Green River in T.9S., R.20E., section 4 (Salt Lake Meridian).

Utah, Uintah County. The Duchesne River and its 100-year floodplain from river mile 2.5 in T.4S., R.3E., section 30 (Salt Lake Meridian) to the confluence with the Green River in T.5S., R.3E., section 5 (Uintah Meridian).

Colorado, Delta and Mesa Counties. The Gunnison River and its 100-year floodplain from the confluence with the Uncompahgre River in T.15S., R.96W., section 11 (6th Principal Meridian) to Redlands Diversion Dam in T.1S., R.1W., section 27 (Ute Meridian).

Colorado, Mesa and Garfield Counties. The Colorado River and its 100-year floodplain from Colorado River Bridge at exit 90 north off Interstate 70 (river mile 238) in T.6S., R.93W., section 16 (6th Principal Meridian) to Westwater Canyon (river mile 125) in T.20S., R.25E., section 12 (Salt Lake Meridian) including the Gunnison River and its 100-year floodplain from the Redlands Diversion Dam in T.1S., R.1W., section 27 (Ute Meridian) to the confluence with the Colorado River in T.1S., R.1W., section 22 (Ute Meridian).

Utah, Grand, San Juan, Wayne, and Garfield Counties. The Colorado River and its 100-year floodplain from Westwater Canyon (river mile 125) in T.20S., R.25E., section 12 (Salt Lake Meridian) to full pool elevation, upstream of North Wash and including the Dirty Devil arm of Lake Powell in T.33S., R.14E., section 29 (Salt Lake Meridian).

New Mexico, San Juan County, and Utah, San Juan County. The San Juan River and its 100-year floodplain from the Hogback Diversion in T.29N., R.16W., section 9 (New Mexico Meridian) to the full pool elevation at the mouth of Neskahai Canyon on the San Juan arm of Lake Powell in T.41S., R.11E., section 26 (Salt Lake Meridian).

Arizona, Coconino and Mohave Counties, and Nevada, Clark County. The Colorado River and its 100-year floodplain from the confluence with the Little Colorado River in T.32N., R.5E., section 1 (Gila and Salt River Meridian) to Hoover Dam in T.30N., R.23W., section 3 (Gila and Salt River Meridian) including Lake Mead to the full pool elevation.

Arizona, Mohave County, and Nevada, Clark County. The Colorado River and its 100-year floodplain from Hoover Dam in T.30N., R.23W., section 1 (Gila and Salt River Meridian) to Davis Dam in T.21N., R.21W., section 18 (Gila and Salt River Meridian) including Lake Mohave to the full pool elevation.

Arizona, La Paz and Yuma Counties, and California, San Bernadino, Riverside, and Imperial Counties. The Colorado River and its 100-year floodplain from Parker Dam in T.11N., R.18W., section 16 (Gila and Salt River Meridian) to Imperial Dam in T.6S., R.22W., section 25 (Gila and Salt River Meridian) including Imperial Reservoir to the full pool elevation or 100-year floodplain, whichever is greater.

Arizona, Graham, Greenlee, Gila, and Pinal Counties. The Gila River and its 100-year floodplain from the Arizona-New Mexico border in T.8S., R32E., section 34 (Gila and Salt River Meridian) to Coolidge Dam in T.3S., R.18E., section 17 (Gila and Salt River Meridian), including San Carlos Reservoir to the full pool elevation, Bonita Creek and its 100-year floodplain from the infiltration gallery in T.6S., R.28E., section 5 (Gila and Salt River Meridian) to the confluence with the Gila River in T.6S., R.28E., section 21 (Gila and Salt River Meridian) and Eagle Creek and its 100-year floodplain from the Phelps-Dodge Pumping Plant in T.4S., R.28E., section 26 (Gila and Salt River Meridian) to the confluence with the Gila River in T.5S., R.29E., section 31 (Gila and Salt River Meridian).

Arizona, Gila County. The Salt River and its 100-year floodplain from the old U.S. Highway 60/State Route 77 bridge (unsurveyed) to Roosevelt Diversion Dam in T.3N., R.14E., section 4 (Gila and Salt River Meridian) including Cherry Creek and its 100-year floodplain from the Cherry Creek road crossing in T.4N., R.15E., section 3 (Gila and Salt River Meridian) to the confluence with the Salt River in T.4N., R.15E., section 23 (Gila and Salt River Meridian) and Canyon Creek and its 100-year floodplain from the OW Ranch road crossing in T.R. section (Gila and Salt River Meridian) to the confluence with the Salt River in T.5N., R.16E., section 21 (Gila and Salt River Meridian).

Arizona, Yavapai County. The Verde River and its 100-year floodplain from the base of the dam forming Sullivan Lake in T.17N., R.2E., section 15 (Gila and Salt River Meridian) to Horseshoe Dam in T.7N., R.6E., section 2 (Gila and Salt River Meridian), including Horseshoe Lake to the full pool elevation including Sycamore Creek and its 100-year floodplain from the boundary with the Sycamore Canyon Wilderness Area in T.17N., R.3E., section 8 (Gila and Salt River Meridian) to the confluence with the Verde River in T.17N., R.3E., section 7 (Gila and Salt River Meridian), Oak Creek and its floodplain from Page Springs State Fish Hatchery in T.16N., R.4E., section 23 (Gila and Salt River Meridian) to the confluence with the Verde River in T.15N., R.4E., section 20 (Gila and Salt River Meridian) and West Clear Creek and its 100-year floodplain from the boundary of the West Clear Creek Wilderness Area in T.13N., R.6E., section 15 (Gila and Salt River Meridian) to the confluence with the Verde River in T.13N., R.6E., section 21 (Gila and Salt River Meridian).

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

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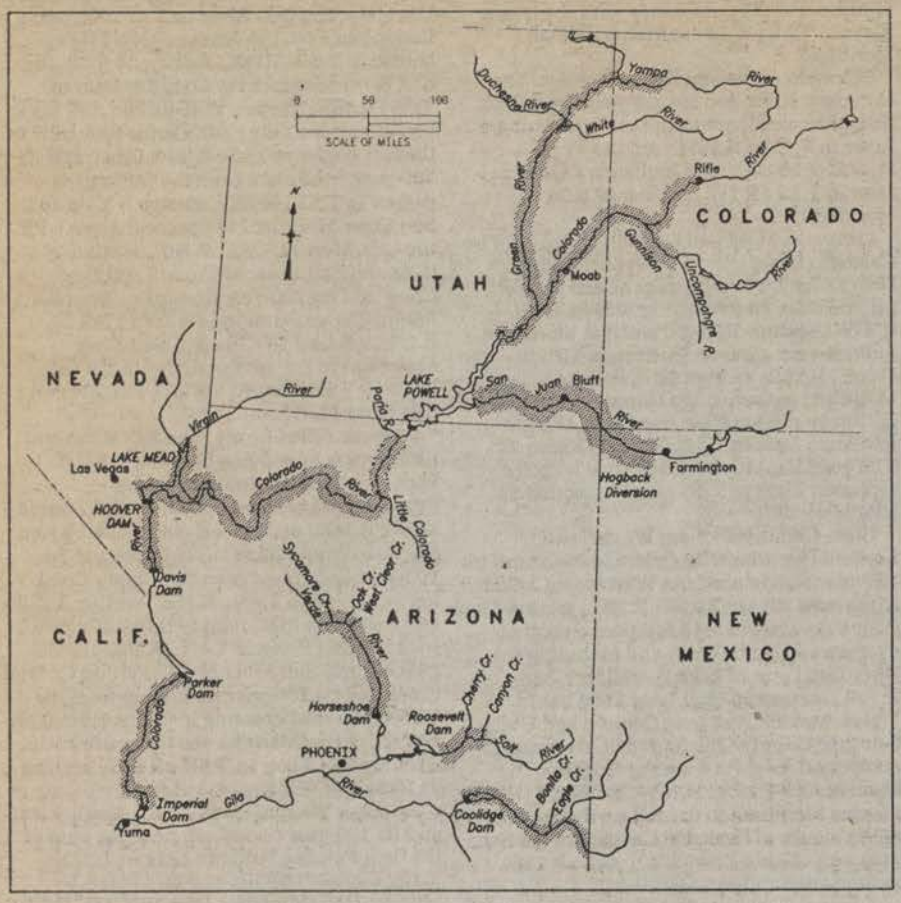

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Dated: January 21, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–2036 Filed 1–25–93; 2:46 pm]

BILLING CODE 4310–55–P

federal register

Friday
January 29, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Mississippi Band of Choctaw Indians; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Mississippi Band of Choctaw Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact Between the Mississippi Band of Choctaw Indians and the State of Mississippi, enacted on December 4, 1992.

DATES: This action is effective January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: January 15, 1993.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 93–2105 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–02–M

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Vol. 58, No. 18

Friday, January 29, 1993

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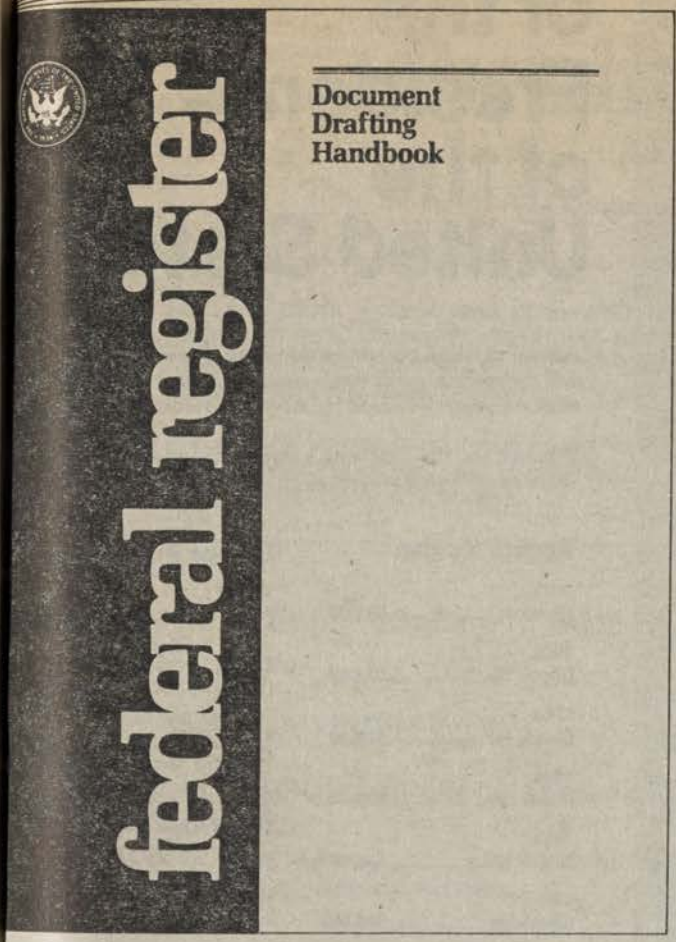

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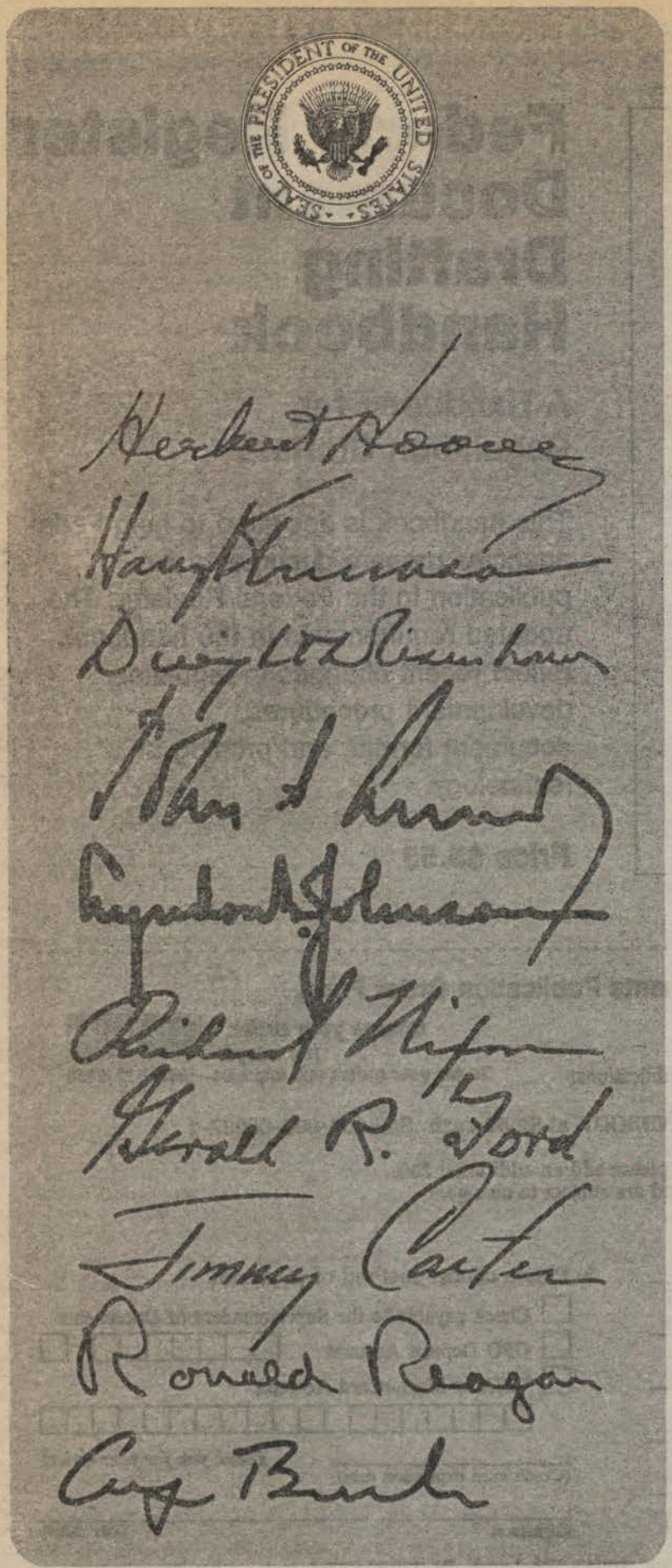

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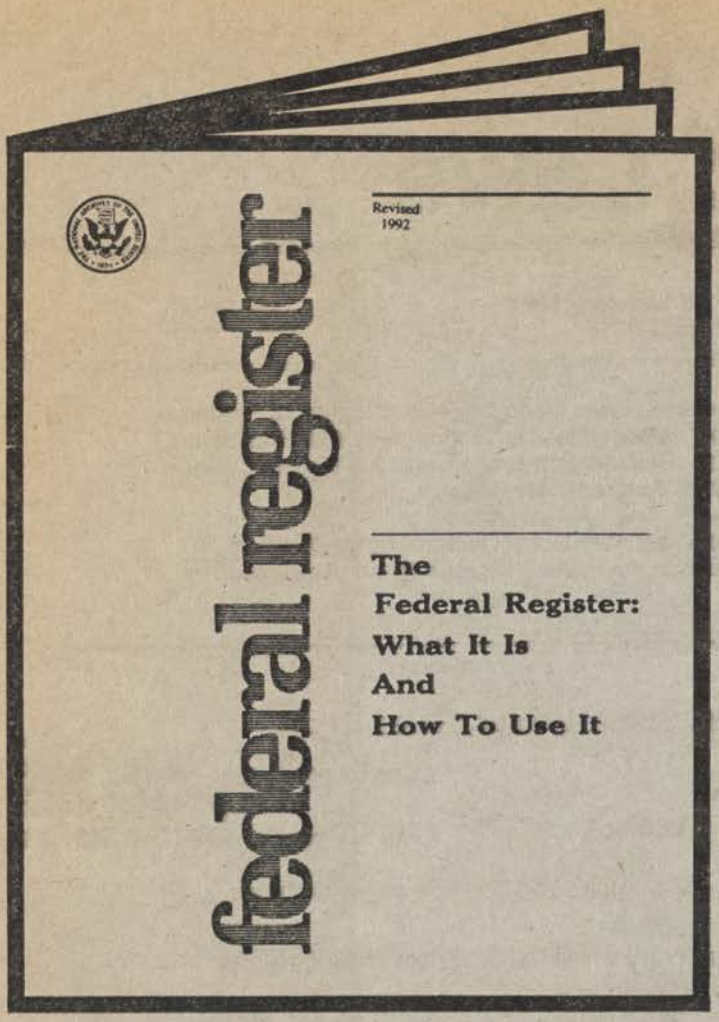

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